1.

AN

ACCOUNT

OF THE

PROCEEDINGS

IN THE

UNIVERSITY OF CAMBRIDGE,

AGAINST

WILLIAM FREND, M. A.

Fellow of Jesus College, Cambridge,

FOR PUBLISHING A PAMPHLET, INTITLED

PEACE and UNION, &c.

CONTAINING

THE PROCEEDINGS IN JESUS COLLEGE,
THE TRIAL IN THE VICE-CHANCELLER'S COURT,
AND IN THE COURT OF DELEGATES.

Published by the Defendant.

I would as soon murder a man for his estate, as prosecute him for his religious and speculative errours.

Lord Chesterfield's Letters to the Bishop of Waterford. Letter XXXI.

CAMBRIDGE:

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M,DCC,XCIII.

[PRICE FOUR SHILLINGS AND SIX-PENCE.]

TO THE

MEMBERS

OF THE

HOUSE OF COMMONS.

GENTLEMEN,

SEVERAL of you are in the ſame ſituation with myſelf, both fellows of colleges, and members of an academical ſenate: a much greater number enjoys the privileges of the latter character. In either capacity, the proceedings in the univerſity of Cambridge, by which an inſolent and infamous attack has been made upon my rights and property, deſerve a ſerious inveſtigation. But, if not a ſingle member of the houſe had either received his education at, or been connected with an univerſity, inſtitutions of ſuch national importance require continual inſpection; and the places, in which our young men are to be trained up to the love of their country, and the knowledge of every uſeful ſcience, are not to be degraded by the pitiful reſentment of monks, and the ſquabbles of low characters intriguing for preferment.

I call on you, not only on my own account, though I think that every injured engliſhman has a claim on the protection of his fellow countrymen in parliament, but for the ſake of my country, that, by a timely interference on your part, an abominable ſpirit of bigotry and fanaticiſm may be cruſhed in our ſeminaries of learning, and that the rewards of literature may not be made the vehicles of corruption, and the bribes of time-ſerving and intereſted prieſts. The univerſity of Cambridge ſtands in need of a thorough reform. My own experience of its merits and defects, is conſiderable; and the injuries I have received in it, do not make me unmindful of the former, or willing to exaggerate the latter. The application of my firſt years gave me an early op-

portunity of examining thoroughly our ſyſtem of education, and the manners of thoſe who preſide over it: but in the diſcharge of the duties of an important office, I was not prevented from employing many hours in the ſtudies of ſacred literature. In conſequence of this application of my time, I diſbelieved the athanaſian creed; and, on declaring my diſbelief, a learned doctour, now a right reverend prelate, who had moſt probably never given himſelf the trouble of making ſimilar reſearches, deprived me of the office of tutour, and an income of above a hundred and fifty pounds a year.

To tell a man of reading and reflection, that he is not to write, is as abſurd, as, in ſetting a ſumptuous entertainment before a hungry mouth, to prohibit an enjoyment of the repaſt. The ſituation of this kingdom at the end of laſt year ſtruck me, as it did many others, with apprehenſions, not ſo much of ſedition, as held out from high authority, as of the inroads of deſpotiſm, from various aſſociations, formed under the pretext of defending liberty and property, yet giving encouragement to a ſpecies of tyranny, which marks the decline of an empire. When private confidence is deſtroyed, and informers riſe up throughout a kingdom, and one part of a nation is ſet againſt the other, we may be ſure that the time of change is near, and whatever merits the conſtitution has, they muſt be either given up, or carried on to a higher pitch of perfection. The latter was my hope; and, not being a member of any aſſociation, I reſolved to addreſs the contending parties, with a view of bringing them together, to conſult for the common good. Among other political inſtitutions, I could not avoid making ſome remarks on one called the church; but at the very mention of reform in that, which moſt of all requires it, the bigots and time-ſervers of Cambridge, were up in arms: they met together, formed a cabal, conſpired with the judge, determined to puniſh, looked out for a law, ſummoned me for the breach of one, indicted

dicted me upon that and another, took up the attention of the univerſity above three months on this diſpute, expoſed their own ignorance and inſignificance, but had the ſatisfaction at laſt of hearing the judge pronounce a ſentence perfectly illegal and arbitrary. That no inſtance of vexation might be wanting, the maſter of my college was at the ſame time employed againſt me, who, after caballing with a few of the fellows, had the unparralleled inſolence to order me to remove from college; and, by way of enforcing his ſentence, to prohibit the ſervants from ſupplying me with neceſſaries. Is this the proper treatment of a ſtudent? Put yourſelves, gentlemen, into my ſituation. My education has been a very expenſive one, and gave me a natural claim to the advantages, which I once enjoyed. Why is the declaration of ſentiments to be made a pretext for driving me from the ſeats of learning, and depriving me of my property?

There is a publick officer to accuſe individuals of crimes committed againſt the ſtate: a court is wanting, in which an individual may make his complaints againſt the nation. Were I to plead in ſuch a court, I would accuſe the engliſh nation of injuſtice and cruelty. Of injuſtice and cruelty, I repeat the words, to myſelf; and there are, I doubt not, many perſons in the ſame ſituation. The nation, I would ſay, held out encouragement for me to expend my property, and to exerciſe my talents, in the hopes of meeting with a ſuitable reward. I did ſo: but for proclaiming, as in duty bound, what appeared to me to be the truth, I have been ſubjected to loſs of property, and perpetual mortifications. It is unjuſt, I ſay, in the engliſh nation, to permit a ſtudent to be deprived of his property on account of his ſentiments; and it is cruel to hold out that encouragement, which may expoſe him to the ſtings either of conſcience or poverty.

Let an honeſt jury ſit on this cauſe, and the ſophiſtry of prieſtcraft would not prevent a determination in my favour: but, inſtead of damages, the nation ſhould only be called on to redreſs theſe evils, and to prevent others from falling into ſimilar difficulties. Remove at once, we ſay, all your penal laws reſpecting religion; put it on the ſame footing with philoſophy; and, if it is neceſſary that any one ſhould ſubſcribe a ſet of propoſitions, drawn up by quarrelſome divines, above two hundred years ago, let the ſubſcription be confined to thoſe who are to teach them. Is it not ridiculous, that many of you ſhould have ſubſcribed the thirty-nine articles, when you have never read them, and perhaps ſcarce know that you have ſet your names to the belief of them? If you were queſtioned in the houſe by thoſe members, who have not gone through this ceremony, could you enter into the diſputes on the five points; and ſhould you not be the firſt to laugh in private at being ſuppoſed to believe them? What greater connection has the entrance into an academical ſenate with the thirty-nine articles, than into the houſe of commons? But perhaps it will be ſaid: if we do not make ſuch reſtrictions, perſons, who are not chriſtians, may be admitted into the higheſt ranks of the univerſity. We anſwer: if it is requiſite to have only chriſtians, draw up ſuch articles as may be ſubſcribed in the preſent days; and you know, and all men know, that there is no one in England who ſubſcribes the articles in the ſenſe in which they were impoſed, nor can ſuch a ſenſe be fixed on them by any one, in which the acquieſcence of another on the principles of common ſenſe is to be expected. But ſuppoſing non-chriſtians to be admitted, where would be the harm? May not an infidel be a very good claſſical ſcholar, an excellent mathematician, an acute logician? May he not be an ornament to the univerſity in a variety of arts and ſciences, without ever entering into religious diſputes? I have had ſome experience of academical men, and ſhould be very willing

ling to exchange a few of our moſt orthodox men, with long faces, and empty ſkulls, for the learning, talents, and integrity of infidels. Let us lay aſide theſe idle diſtinctions. There is nothing ſo well calculated for the happineſs of mankind as religion; but, when it becomes an inſtrument of policy, and is made a diſcriminating mark in ſociety, all the vices of the prieſthood neceſſarily fall into its train, and that, which ſhould be only a bleſſing, proves, to honeſt minds, a ſource of infinite vexation.

The firſt thing, therefore, in the univerſity, to which I would call your attention, is the folly of making its members ſubſcribe a religious creed. The abſurdity of requiring a ſubſcription to Euclid, or Newton, though in them there is demonſtration, would at firſt ſight be apparent; but, in queſtions admitting only probability, and which muſt, in various periods have been received, either on falſe grounds, or no grounds at all, it is vindicated by men, who pretend to be philoſophers and chriſtians. Permit the language of an eminent writer on the moſt celebrated ſchools of antiquity, to be applicable to our ſeats of learning: ‘ The ſyſtems, which profeſſed to unfold the nature of god, of man, and of the univerſe, entertained the curioſity of the philoſophick ſtudent: and, according to the temper of his mind, he might doubt with the ſcepticks, or decide with the ſtoicks, ſublimely ſpeculate with Plato, or ſeverely argue with Ariſtotle.’ What! if in one year Athens, by the baniſhment of Epicurus, and his antagoniſts, ſilenced all vain diſputes concerning the nature of the gods, ‘ in the enſuing year they recalled the haſty decree, reſtored the liberty of the ſchools, and were convinced by the experience of ages, that the moral character of philoſophers is not affected by the diverſity of their theological ſpeculations *.’

* Gibbon’s Decline of the Roman empire. c. 11.

Having

Having releaſed our minds from a worſe than egyptian bondage, go on a little farther, and remove another burden, which the folly and ſuperſtition of our anceſters impoſed on poſterity. The univerſity was founded in the times of popery, when the character of the prieſthood, to which the little learning in thoſe ages was in a great meaſure confined, was ſuppoſed to be ſacred. Hence the education of our young men is confined, not only in colleges, but in moſt of our ſchools, to the clergy. Now what connection is there between a teacher of the mathematicks, or a lecturer on Homer and Ariſtophanes, with the reader of certain prayers, and explainer of religious doctrines in the churches? Cannot the ſame diſcipline be kept up by well-bred men of letters, as by the ſtarch manners of cloiſtered life: and are a large wig, a long band, and a black dreſs, better qualifications for a lecture room, or a college lodge, than the plain dreſs of an engliſh gentleman? Let it not then be required of a man of letters, to go into orders for academical preferment, but make the riſe of an individual depend ſolely on his progreſs in literature.

To require men to go into orders, is a relick of popery; a ſtill worſe prevails in our univerſities. The colleges are now the receptacles of proteſtant, inſtead of popiſh monks. It would be an inſult on your feelings as men, and your underſtanding, as rational beings, to dwell a moment on the abſurdity of requiring celibacy from fellows of colleges. The only argument now advanced in its favour, is the fear of too tardy a ſucceſſion, which might be obviated; and, if not, the law of nature is paramount to any made by civil ſociety.

Theſe few things are pointed out to ſhew you the neceſſity of ſome reform. Make the univerſities in ſhort proper to qualify men for the ſituations which they are hereafter to occupy in life, and remove thoſe ridiculous ſtatutes, which, in the preſent days, no one can obey.

The

The univerſity may be made a great national benefit: the magnificence of its ſtructures, and the extent of its revenues, occaſion envy only in little minds, who do not conſider, that an individual in the peerage poſſeſſes a greater income than that of all the colleges put together; and, inſtead of diminution, a conſiderable increaſe of wealth may be requiſite to render them worthy of a rich and enlightened nation.

There is not, I am perſuaded, a more ſincere friend to the univerſity than myſelf. I wiſh to ſee it flouriſh; and I lament that ſuch men bear ſway in it, as are qualified only to indulge in the repoſe of a prebendal ſtall, or an epiſcopal throne. By the interference of parliament, rewards would be held out to literature alone, and, when the church receives no more encouragement than any other profeſſion, our alma mater will become eminently uſeful to her country, and ceaſe to exhibit ſuch ſcenes, as have lately tempted her ſons to believe her in her dotage.

A glance at the academical proceedings, contained in the following pages, may ſuggeſt ſome other ideas worthy of a diligent examination. The writing of a book has ſubjected me to much inconvenience; and I have been condemned without any ſpecifick propoſitions being pointed out, as contrary to any exiſting law. The ſame thing has taken place in other courts, and nothing appears ſo uncertain as the whole doctrine of libels laid down by parliament, or maintained by the judges. The unuſual outcry raiſed againſt my publication, made me ſubmit it to two eminent characters, the one in the civil, the other in the common law. The opinion of the former is publiſhed in this work; the latter declared that there was nothing criminal in it, but it was impoſſible to ſay, in theſe times, what might be the conſtruction of a jury. Surely the law ought to be definite and clear: tell us what propoſitions are criminal,

and

and authours will then know how far it may be prudent to ſpeak the truth. For my own part, I had not the leaſt idea, that a work ſuggeſting improvements in a government, without in the leaſt approaching the conſtitution, could be an object of cenſure. I am convinced indeed, that no diſcouragement ſhould be given to the publiſhing of ſpeculative opinions: and ſhould a writer attack the conſtitution itſelf, the reſult ought to be, that we ſhould either improve upon his plans, or laugh at him for the badneſs of his reaſoning.

Much clamour has been lately made on the excellence of our conſtitution; and few people, in talking on this ſubject, are willing to recollect, that the term itſelf is a mixed mode, and, until it is defined, diſputes, carried on with acrimony on ſuch a ſubject, ſhew only the ignorance of the contending parties. The mereſt child in reaſoning knows this; yet the language of men, learned in the law, and eloquent in the houſe of commons, proves ſufficiently, that, either from inattention, or worſe motives, they ſtand in need of being ſent again to the firſt rudiments of ſcience. Every term uſed in law ſhould be clearly defined, and every caſe may then be ſafely entruſted with a jury; but, if the baſeſt arts are uſed to prejudice the minds of the judges, before a work is ſubmitted to their deciſion, the ſituation of writers in Conſtantinople, or Madrid, is preferable to that in our boaſted land of liberty.

In recommending theſe things to your notice, I am diſcharging, I truſt, the duty of a good citizen; and ſincerely wiſhing, that in theſe critical times your deliberations may be the means of promoting the common good,

I remain,

With great reſpect,

Gentlemen,

Your much-injured fellow-countryman,

WILLIAM FREND.

PROCEEDINGS IN JESUS COLLEGE

AND THE

UNIVERSITY.

THE pamphlet, entitled Peace and Union, occaſioned on its firſt appearance no ſmall ferment in the univerſity. The fellows of St. John's college were particularly clamourous, and they were joined by that ſet of men, who, from pretenſions to particular ſanctity of manners and zeal for orthodoxy, have gained among us the appellation of ſaints. Theſe two ſets formed the majority of the faction, which now goes in the univerſity by the name of the 27, among whom the reader will naturally conclude, that there were ſeveral, who, caring little for orthodoxy or ſanctity, were zealous to recommend themſelves to the ruling powers; and, not being capable of acquiring diſtinction by any laudable purſuits in the paths of literature, were anxious to intrude themſelves by noiſe and intrigue on the publick notice.

Theſe different parties were employed in diſparaging the book, and ſpreading abroad very unfavourable reports of its authour. They did not heſitate to declare him guilty of a falſehood on a matter of fact, which was well known to thouſands within an hour's ride of Cambridge: but, ſuch is the nature of prejudice, they would neither give themſelves the trouble of inquiring, nor liſten to the atteſtations of impartial men.

At Jeſus college there was a meeting of ſome of the fellows, who drew up the following paper:

Feb. 22, 1793.

At a meeting of the preſident and major part of the reſident fellows;

Reſolved, that a pamphlet, entitled Peace and Union, lately publiſhed by W. Frend, M. A. fellow of this college, appears to us to have been written with the evil intent of prejudicing the clergy in the eyes of the laity, of degrading in the publick eſteem the doctrines and rites of the eſtabliſhed church, and of diſturbing the harmony of ſociety. And that, as we feel it to be our particular duty to diſavow principles calculated to miſlead the minds of young men entruſted to our care, a copy of the ſaid pamphlet be ſent both to the vice-chancellor of the univerſity, and to the viſitor of the college, incloſed in a letter to each, expreſſing our diſapprobation of the opinions therein delivered, and humbly requeſting them to take ſuch meaſures as in their judgement may appear moſt proper for the effectual ſuppreſſion of their dangeous tendency.

W. Mathew. J. Coſtobadie. T. Caſtley.
J. Plampin. Tho. Bayley.

Soon after there was a meeting at the vice-chanceller's lodge of the twenty-ſeven, all members of the ſenate, who entered into reſolutions to proſecute the authour. In conſequence of this tranſaction the following notes paſſed between Mr. Frend, Dr. Kipling, and the vice-chanceller.

To the Rev. Dr. Kipling.

Mr. Frend requeſts that Dr. Kipling would ſend him a copy of the reſolutions made, and the names of the perſons who ſigned them at a meeting held yeſterday at Queen's lodge, of which he underſtands that Dr. Kipling was the chairman.

Tueſday morn. Mar. 5, 1793.

To

To Mr. Frend.

Dr. Kipling has not in his poſſeſſion a copy of the reſolutions that were made yeſterday at Queen's lodge.

Tueſday, Mar. 5.

To the Rev. Dr. Kipling.

Mr. Frend requeſts that Dr. Kipling would inform him by what means he is to get a copy of the reſolutions that were made yeſterday at Queen's lodge.

Tueſday, Mar. 5.

To Mr. Frend.

Sir,

The reſolutions were depoſited in the hands of the vice-chancellor, and I believe that no copy was taken of them by any gentleman at the meeting.

I am, Sir, yours, &c.

T. Kipling.

To the Rev. the Vice-chanceller.

Mr. Frend having been informed by Dr. Kipling, the chairman of a meeting held yeſterday in the houſe of the vice-chanceller, that the reſolutions of that meeting were depoſited in the hands of the vice-chanceller, requeſts the favour of the vice-chanceller to ſend him a copy of theſe reſolutions, and of the names of the perſons who ſigned them.

Mar. 5, 1793.

To the ſame.

Mr. Frend, not having received any anſwer to his note to the vice-chanceller, is apprehenſive that it may not have reached him, and muſt therefore beg leave to renew his requeſt, that the vice-chanceller would favour him with a copy of the reſolutions made yeſterday at his

lodge, and depoſited, as he was informed by a note from Dr. Kipling, in the hands of the vice-chanceller, together with a copy of the names of the perſons who ſigned them. Mr. Frend's intereſts are ſo materially involved in theſe reſolutions, that he is anxious both to inſpect them himſelf, and to ſubmit them to the conſideration of his friends. On theſe accounts Mr. Frend truſts the vice-chanceller will think no apology neceſſary for this trouble.

Mar. 5, five o'clock, afternoon.

To Mr. Frend.

The Vice-chancellor informs Mr. Frend that he does not think himſelf authorized to comply with his requeſt.

Queen's Coll. Lodge, Tueſday, Mar. 5.

The affair now took a very ſerious turn, and ſome ſevere cenſures were paſſed on the twenty-ſeven in the publick papers; which put the authour under the neceſſity of writing the following letter to the editor of the Morning Chronicle, who very kindly inſerted it in his paper.

To the Editor of the Morning Chronicle.

Sir,

It was with great concern that I read in your paper of Thurſday laſt, an account of the proceedings now on foot in this place againſt myſelf as author of a pamphlet entitled 'Peace and Union, recommended to republicans and antirepublicans,' becauſe it is my wiſh that the publick may be preſented with a clear ſtatement of this extraordinary buſineſs without an appearance of bias on either ſide; and the favourable terms in which my name is mentioned excite ſtill more the malice of my enemies, and increaſe the calumnies to which I have for a long time been ſubject. It is true, that a party of maſters of arts, and doctors, met at the vice-chanceller's on Monday laſt,

laſt, to deliberate on the mode of attacking me; but the vice-chanceller, as he is to be the judge, declining to be preſent at the debates, Dr. Kipling took the chair. A committee was appointed, I underſtand, conſiſting of Dr. Kipling, Dr. Jowett, Mr. Mainwaring, Mr. Belward, and Mr. Manſell, to draw up articles of accuſation; and a general meeting is to be held to-morrow, when they are to be taken into conſideration.

As the account of the proceedings on Monday reached me only by report, I wrote on Tueſday morning to Dr. Kipling for a copy of the paper which had been ſigned by his party, and was by him referred to the vice-chanceller; the vice-chanceller, after two applications to him by note, and ſeveral hours delay, returned for anſwer, that he did not think himſelf authorized to comply with my requeſt.

In this ſtate affairs reſt at preſent. I ſhall not renounce any poſitions in my book, unleſs ſome valid arguments (of which to my knowledge not one of the twenty-ſeven has as yet attempted to produce the leaſt ſhadow) are adduced in confutation of them. The book will probably ſoon be publiſhed in London, when the publick at large may have an opportunity of commenting on the danger of thoſe truths which have excited ſo great a ferment in the univerſity.

I remain, Sir, your very obedient,

W. Frend.

In this ſituation affairs remained in the univerſity, and the authour expecting every moment to be cited into the vice-chanceller's court, did not receive his ſummons until the 24th of April. But not content with proſecuting him in one court, the faction thought it expedient, that he ſhould have no reſt in his own college, and the maſter, after two days deliberation with

ſeveral

ſeveral of the fellows, and an intermediate journey to London, to take the opinion of a civilian, appointed a meeting of the college, which he required the authour, by the following note, to attend.

The maſter of Jeſus college informs Mr. Frend that he appoints Wedneſday, April 3, at eleven o'clock in the morning, for a meeting of the maſter and fellows, to take into conſideration a pamphlet, entitled Peace and Union recommended, &c. by W. Frend, &c. which meeting the maſter requires Mr. Frend, if called upon, to attend.

Jeſus Coll. Camb. Mar. 27, 1793. W. Pearce.

To Mr. Frend.

The attention of the univerſity was now turned to this meeting, and the opinion, which the maſter had brought down with him from town, was thought by the faction a ſufficient ground for expulſion from college. This the maſter would not permit the authour to have a ſight of, though it was ſhewn by him to his friends out of college, who loſt no time in circulating the report through the univerſity, that every thing ſucceeded to their wiſhes, and that there could be no doubt of the college co-operating with the twenty-ſeven in the execution of their deſigns. The friends of the authour were alarmed; with the energy of that zeal, which throughout the whole of theſe proceedings have uniformly marked their kindneſs towards him, they came round him, and entreated him to be no longer paſſive. They requeſted him to ſend the caſe to a civilian: he conſidered it as ſuperfluous, conceiving that it required none of the acuteneſs of a lawyer to underſtand a plain college ſtatute: but being unwillling to oppoſe the better judgement of perſons, for whom he has the greateſt regard, he ſent his caſe to town to be laid before a civilian, and received the following opinon from Dr. Harris.

CASE

CASE.

The following is a copy of one of the ſtatutes of Jeſus college, Cambridge.

De pœna enormiter delinquentium.

Item ſtatuimus ordinamus et volumus quod ſi quis ſociorum aut commenſalium ſive ſtudentium dicti noſtri collegii incorrigibilis exiſtat vel de perjurio (quod abſit) aut ſacrilegio furto rapina vel homicidio adulterio vel inceſtu aut alio lapſu carnis enormi aut iniqua violenta et atroci percuſſione ſtudentis ſocii vel quod deterius eſt magiſtri vel in alio quocunque crimine de majoribus et gravioribus quæ infamiam irrogant reus inventus fuerit per magiſtrum vel præſidentem et majorem partem ſociorum ab ipſo collegio noſtro removeatur et penitus expellatur.

Mr. Frend, one of the fellows of Jeſus college, being the ſuppoſed authour of a tract, entitled 'Peace and Union, &c.' a copy of which is left herewith for your peruſal, and the college intending to take it into conſideration, how far they ſhall be juſtified in proceeding againſt him on the above recited ſtatute, on Wedneſday next, your anſwer is requeſted, without loſs of time, to the following queſtion:

"Is the authour of the book, entitled Peace and Union, &c. liable, on account of any thing written in that book, to the penalty contained in the above ſtatute, and under what part of the ſtatute can the authour be proceeded againſt?"

The anſwer of Dr. HARRIS.

The college ſtatute is penal in its nature, and ought not to be conſtrued more extenſively by the members of a ſociety, than it would by an eſtabliſhed court of publick

lick juſtice; and penal ſtatutes are always conſtrued ſtrictly in public courts.

The recited ſtatute enables the maſter or preſident and the majority of the fellows, which I apprehend to be a majority of the whole number, and underſtand to be 16, to puniſh any member of the college, even by expulſion, who is found guilty of perjury, ſacrilege, rapine, theft, homicide, adultery, inceſt, or of any groſs miſbehaviour or violence toward the maſter or any of the fellows, and alſo of any other crimes, which may ſtamp infamy on the offender.

It is, I preſume, clear, that the writer of the pamphlet cannot be accuſed of the commiſſion of any of the crimes, which are expreſsly ſpecified in the ſtatute; it can therefore only be aſked, whether Mr. Frend, admitting himſelf to be the author of the pamphlet, can, as ſuch, be ſaid, in conſequence of any paſſage or paſſages contained in it, to have maintained, adopted, or favoured any doctrine or opinion, which can be juſtly deemed to be of ſuch nature as to brand him with infamy, on ſuppoſition that this ſtatute is not limited to overt acts, and can be extended to tenets.

To this I anſwer,

That, as the crimes expreſsly mentioned in the ſtatute, are all crimes of commiſſion, it is to be inferred that the crimes, which are intended to be included under the words, 'quocunque alio crimine,' are crimes of commiſſion alſo, and of the ſame nature with thoſe which are expreſſed, and imply not the crimes of entertaining and propagating opinions, be they what they may: I have, however, no difficulty in further ſaying, that on a very attentive peruſal of the pamphlet, I have not been able to find any doctrine or opinion propoſed, maintained or favoured

favoured in it, which in my apprehenſion can, in the judgement of any loyal, moral and chriſtian man, be ſaid to fix a ſtain on the maintainer of ſuch doctrine or opinion, and much leſs ſuch a ſtain as could render him infamous in any legal ſenſe, or in the judgement 'boni et æqui viri.'

After what I have written, it may not be abſolutely neceſſary for me to add more, but it may yet be in point of form expedient for me to ſay, though it may ſavour of repetition, that on the fulleſt conſideration of the caſe, according to the information before me derived from the college ſtatute and the pamphlet, I am ſtrongly led to think, that Mr. Frend can have no reaſon to be apprehenſive of any ſort of cenſure from a majority of a number of literary, well-informed and candid men, ſuch as his college is reputed to be compoſed of, if they confine themſelves in the preſent inſtance to the powers given them by the college ſtatute, and to the contents and the general tenor of the pamphlet.

GEORGE HARRIS,

Doctors Commons, 31ſt March, 1793.

The caſe and anſwer the authour put into the hands of the maſter the day before the meeting, and deſired him to lay them before the fellows. This was done in the evening, and on the next day the authour wrote down every thing that paſſed in the meeting, as far as he was perſonally concerned, in the following words:

A little before twelve o'clock on April 3, 1793, I was called into the parlour by the porter; and the maſter, in the preſence of ten fellows, ſhewing me a pamphlet, aſked me, whether I avowed myſelf the authour of it. I told him that, by advice of a civilian, I requeſted the accuſation, if I was accuſed of any thing, in writing.

He told me, that there was no accuſation, and ſhould only aſk me this queſtion. I replied, that by advice of a civilian I muſt beg leave to wave any anſwer to this queſtion. Do you diſavow it, ſaid the maſter. I replied; On the ſame principle I wave any anſwer to this queſtion. I was then deſired to withdraw.

Between ſeven and eight in the evening the maſter again ſent for me, and told me in the preſence of the fellows, that they had enquired into the proofs of my being the publiſher of the pamphlet, and that they were thought ſatisfactory.

He alſo read to me the following reſolutions:

1ſt. That ſeveral paſſages in the ſaid pamphlet have a tendency to prejudice the clergy in the eyes of the laity.

2dly. That ſeveral paſſages in the ſaid pamphlet have a tendency to degrade, in the publick eſteem, the doctrines and rites of the church of England.

3dly. That there is a tendency in the ſaid pamphlet to diſturb the harmony of ſociety.

4thly. That the ſaid pamphlet tends more particularly to hurt the credit and intereſts of this college.

5thly. That in publiſhing the ſaid pamphlet, Mr. Frend is guilty of an offence contrary to the laws of the college.

Theſe reſolutions were made, the maſter ſaid, by the maſter and the major part of the fellows.

On being aſked, what I had to ſay in my defence, I requeſted, that a written copy of the accuſation might be

be given to me. Upon which the maſter deſired me to withdraw, that the matter might be put to the vote.

About half an hour after, I was called in again, when the maſter read to me the following words:

The queſtion being put, whether Mr. Frend ſhould have any charge delivered to him in writing, and it being urged, that Mr. Frend had ſeven days notice by a ſummons from the maſter, of a meeting, for the conſideration of his pamphlet, and that the charge was ſufficiently implied in the reſolutions, that had been read to him, it was carried in the negative.

Being aſked then, what I had to ſay in my defence, I replied, that, without an accuſation, it was impoſſible for me to defend myſelf, but that I ſhould be exceedingly ſorry, to have been guilty either intentionally or unintentionally of ſeveral things, contained in their reſolutions. I then retired.

About a quarter paſt nine I was called in again, when the maſter read to me the following words:

The queſtion being aſked, whether Mr. Frend ſhould be again called in, and informed, that the meeting ſtill perſiſt in not delivering a written charge, and that if he will not proceed on his defence, the meeting will proceed without it.

Agreed to.

I then ſaid, that I preſumed, I muſt conſider the reſolutions as an accuſation, and therefore requeſted, that the paſſages in the pamphlet might be referred to, with the ſtatutes which I had offended againſt, and that I would then proceed on my defence. I then retired, and

heard nothing more from the meeting, which broke up about eleven, till the next morning, when I was ſummoned into the parlour between nine and ten.

The maſter was going to read ſomething to me, but I requeſted to ſee firſt the proceedings of yeſterday. I then retired, and on my return the maſter informed me, that my requeſt was not granted. I urged, that I had a material objection to propoſe, but the maſter refuſed to hear any thing, ſaying, that, if I had any thing to ſay in my defence, I ought to have ſaid it yeſterday. I replied, that I was ready to proceed in my defence yeſterday, but was deſired to retire, when I had requeſted, that the paſſages of the pamphlet might be referred to, with the ſtatutes which I had offended againſt, but was never called in to make my defence. He ſilenced me, and read the following words from a written paper in his hands:

Is it the opinion of this meeting, that Mr. Frend be removed from the college, that is from the precincts of the college, and from reſidence in it, till he ſhall produce ſuch proofs of good behaviour, as ſhall be ſatisfactory to the maſter and major part of the fellows?

In the affirmative	The maſter.
	Mr. Mathew.
	Mr. Plampin.
	Mr. Coſtobadie.
	Mr. Bayley.
	Mr. Caſtley.
	Mr. Stockdale.
In the negative	Mr. Newton.
	Mr. Warren.
	Mr. Whitehead,
	Mr. Otter.

And

And agreed by thoſe, who anſwered in the affirmative, that he may be allowed a month from this time, to ſettle his affairs in college, the other four not diſſenting.

I then withdrew.

It was not likely ſuch arbitrary meaſures ſhould be complied with, and though the biſhop of Ely is viſiter of the college, it was thought neceſſary to comply with the common forms on ſuch occaſions, and to appeal to him from the injuſtice of the maſter and the ſix fellows. The appeal was accompanied with the following letter.

My Lord,

The unſtatutable proceedings of the maſter and certain fellows of the college, have put me under the neceſſity of troubling your lordſhip with the appeal which accompanies this letter; and I flatter myſelf that your lordſhip will ſee the propriety of my requeſt, that your lordſhip would ſuſpend the execution of the ſentence, againſt which I appeal, until the matter, now at iſſue, has received your lordſhip's determination.

I remain, with great reſpect, my lord,

your lordſhip's very obedient

Jeſ. Coll. Camb. and humble ſervant,

April 17, 1793. W. Frend.

THE APPEAL.

To the hon^ble^, and right rev^d^. James, lord biſhop of Ely, viſiter of Jeſus college; the humble appeal of William Frend, M. A. and fellow of the ſaid college,

Sheweth,

That at a meeting of the maſter and ten fellows of the ſaid college, held on the third of April, the maſter and a majority of the ſaid fellows ſuppoſing the appellant

to

to be the publiſher of a pamphlet, entitled Peace and Union, concurred in the following reſolutions:

1. That ſeveral paſſages in the ſaid pamphlet have a tendency to prejudice the clergy in the eyes of the laity.

2. That ſeveral paſſages in the ſaid pamphlet have a tendency to degrade, in the publick eſteem, the doctrines and rites of the church of England.

3. That there is a tendency in the ſaid pamphlet to diſturb the harmony of ſociety.

4. That the ſaid pamphlet tends more particularly to hurt the credit and intereſts of this college.

5. That in publiſhing the ſaid pamphlet, Mr. Frend is guilty of an offence contrary to the laws of the college.

And, in conſequence of theſe reſolutions, without having pointed out the exceptionable paſſages in the ſaid pamphlet, or the ſtatutes againſt which the appellant is ſuppoſed to have offended, or having even permitted him to ſpeak in his defence, the maſter and ſix of the fellows agreed, on the ſubſequent day, to remove the appellant from reſidence in the college, as appears from the following words, which the maſter read to the appellant in the meeting:

Is it the opinion of this meeting, that Mr. Frend be removed from the college, that is from the precincts of the college, and from reſidence in it, till he ſhall produce ſuch proofs of good behaviour as ſhall be ſatisfactory to the maſter and major part of the fellows?

The

In the affirmative { The maſter. / Mr. Mathew. / Mr. Plampin. / Mr. Coſtobadie. / Mr. Bayley. / Mr. Caſtley. / Mr. Stockdale.

In the negative { Mr. Newton. / Mr. Warren. / Mr. Whitehead. / Mr. Otter.

And agreed by thoſe who anſwered in the affirmative, that he may be allowed a month, from this time, to ſettle his affairs in college, the other four not diſſenting.

To prevent the execution of this ſentence, paſſed in ſo irregular and unſtatutable a manner, the appellant humbly requeſts the interpoſition of the viſiter on the following grounds:

1. Becauſe no exceptionable paſſages in the ſaid pamphlet were produced.

2. Becauſe no laws of the college, againſt which the appellant has offended, were pointed out.

3. Becauſe the appellant had no opportunity of vindicating himſelf from the ſuppoſed charges.

4. Becauſe it does not appear from the ſtatutes of the college, that the maſter and ſix of the fellows, or any other number leſs than the majority of all the fellows, are competent to inflict any puniſhment on a fellow, much leſs one not expreſsly warranted by the ſtatutes.

5. Be-

5. Becauſe the ſentence of removal from the college is not only not warranted by the ſtatutes, but is clearly inconſiſtent with that which requires the conſtant reſidence of the maſter and fellows.

W. FREND.

The maſter and five fellows anſwered the above appeal, and delivered a copy of it to Mr. Frend.

To the hon^ble. and right reverend JAMES, lord biſhop of Ely, viſitor of Jeſus college, Cambridge.

My lord,

We have received from Mr. Frend a copy of an appeal, which he has made to your lordſhip, from a ſentence of a motion pronounced againſt him by the maſter and major part of the fellows, for publiſhing a pamphlet entitled 'Peace and Union, &c.' The ſpirit and contents of the pamphlet conſidered, we had reaſon to think that in the ſentence pronounced, the lenity of the college was as conſpicuous as its juſtice. But ſince Mr. Frend has not thought proper to acquieſce in it, we beg leave, in few words, to vindicate our proceedings from the objections which he has made to them.

As Mr. Frend, in the introductory part of his appeal, repreſents the maſter and fellows, as only ſuppoſing him to be the publiſher of the pamphlet in queſtion, we ſhall lay before your lordſhip, in the firſt place, the evidence which was adduced to us in proof of that fact.

Mr. Bowtell, the bookbinder, and his boy, were the firſt called in. The boy ſaid, that a parcel of books came to Mr. Bowtell by the St. Ive's carrier, that Mr. Frend came and unbound the parcel, dividing it into two bundles, which, by Mr. Frend's orders, he carried to the two bookſellers, Merrill and Lunn, for ſale. Mr. Bowtell

Bowtell confirmed that Mr. Frend was at his houſe on this buſineſs, and that it was on the 12th or 13th of February. The boy added, that he did not carry any books to Merrill's or Lunn's for a conſiderable time before or after. Lunn's ſervant was then called in, he confirmed the bringing of the bundle by Bowtell's boy to Lunn's ſhop, and ſaid that it conſiſted of Mr. Frend's book called 'Peace and Union,' &c. He farther ſaid, that that morning, April 3d, he brought twenty copies of this pamphlet from Mr. Frend's rooms, at Mr. Frend's requeſt, for ſale, one of which pamphlets he produced.

This is a detail of the evidence given to us in ſupport of the fact of publication, by which we were fully ſatisfied that Mr. Frend was to be conſidered as the publiſher of the pamphlet. The fact of publication being thus eſtabliſhed, the firſt ground of objection taken to the validity of our proceeding thereon is, that no exceptionable paſſages of the pamphlet were produced.

It is true, my lord, that we declined pointing out particular paſſages, becauſe our diſapprobation was founded not merely on detached paſſages, many of which are, in our apprehenſion, of a tendency highly criminal and dangerous, but alſo on the general tenor and tendency of the whole compoſition. If your lordſhip ſhould deem it neceſſary, that paſſages ſhould be diſtinctly pointed out, we ſhall have neither difficulty nor repugnance in obeying any order which your lordſhip may be pleaſed to make upon us to that effect. But we humbly conceive that the whole pamphlet (to which we refer, and which we have annexed to this anſwer) being ſubmitted to your lordſhip's view, will remove the neceſſity of any ſuch ſelection at preſent, and fully juſtify the propriety of having declined to make any ſuch ſelection at the time of the inquiry.

The next ground is, that no laws of the college, againſt which Mr. Frend had offended, were pointed out.

In caſes of diſcipline, we apprehend that it is not neceſſary to point out particular ſtatutes; becauſe if the matter is referred to the viſitor, the college avails itſelf not of one, but of the whole body of the ſtatutes, and alſo of the general deſign and intention with which ſocieties of that kind are inſtituted. The college, we ſubmit, hath, quatenus a college, an inherent right, independently of any expreſs or particular ſtatute, to take cognizance of and puniſh offences, contra bonos mores, committed by its members; and among thoſe offences we believe, no perſon will have any difficulty in ranking the publication of this pamphlet.

The 3d ground is, that Mr. Frend had no opportunity of vindicating himſelf from the ſuppoſed charges.

It will appear to your lordſhip from the courſe of the proceedings, that three diſtinct opportunities of defence were given to Mr. Frend, which he declined to accept, but upon conditions demanded by himſelf, to which the college acceded, ſo far as they conceived thoſe conditions to be founded in juſtice. The firſt time that he wa called in, inſtead of entering upon his defence, he demanded a written charge. The ſecond time that he was called in, he would not enter upon his defence, but inſiſted upon his former demand, though he was told that the charge, which he demanded, was contained in the reſolutions which had been read to him, of which he had taken a copy. It was then reſolved, that if he would not enter upon his defence without ſome other charge than that contained in the reſolutions, the meeting would proceed without his defence. On being called in a third time, this was declared to him: but inſtead of attending to it, he made other new demands, which were,

were, that as by the reſolutions read to him, he was accuſed of certain offences, the paſſages of the book, in which he had offended, and the ſtatutes againſt which he had offended, might be pointed out to him; which were refuſed on the grounds above ſtated to your lordſhip in our anſwer to the firſt and ſecond articles of objection.

As to the 4th objection, that it doth not appear from the ſtatutes of the college, that the maſter and ſix of the fellows, or any other number leſs than the majority of all the fellows, are competent to inflict any puniſhment on a fellow, much leſs one not expreſsly warranted by the ſtatutes: We anſwer, that the preſent ſentence was virtually paſſed by a majority of the fellows; for a majority of the fellows being preſent at the meeting, and the major part of that meeting having concurred in the ſentence, ſuch ſentence is valid, and to be conſidered as paſſed by the whole meeting, tho' ſome of the members preſent ſhould have refuſed their aſſent to it, and even expreſſed their diſſent from it. If there ſhould be any doubt of this, upon the face of the ſtatutes, we beg leave to refer your lordſhip to biſhop White's interpretation of them, which is of equal validity.

The laſt ground of objection is, that the ſentence of removal from the college is not only not warranted by the ſtatutes, but is clearly inconſiſtent with that ſtatute, which requires conſtant reſidence of the maſter and fellows.

In anſwer to this we muſt obſerve, that the ſtatutes confer a power of total expulſion itſelf, for ſuch acts of miſconduct, as are more particularly criminal and offenſive. But altho' it were true, that the ſentence was not expreſsly marked out by the ſtatutes, yet we contend, that it was perfectly competent to the college to pro-

nounce it under that general and neceſſary authority which it poſſeſſes in all caſes of diſcipline, whether ſpecifically deſcribed in the ſtatutes or not. Temporary amotion is a puniſhment well known, and is frequent in the practices of all colleges for offences either moral or academical. It is analogous to the canonical puniſhment of ſuſpenſion ab officio, which is chargeable with inducing the ſame inconſiſtency as is complained of in the preſent caſe, ſince the miniſter is thereby reſtrained from diſcharging thoſe duties, which he has ſolemnly bound himſelf to perform. It is analogous to moſt puniſhments in civil ſociety, which induce, for the time they laſt, a diſability of doing ſeveral acts which the guilty perſon would otherwiſe be under an obligation of performing. A ſimilar inconſiſtency to that which is now complained of, occurs between two of our own ſtatutes: the ſtatute de refectionibus, cap. 19, ſays that the fellows ſhall not be abſent from dinner or ſupper in the hall, niſi ex cauſa rationabili, per magiſtrum et ſeneſchallum approbanda. And yet the ſtatute de malis moribus, &c. cap. 8, requires that a fellow, for certain offences ſhall be put out of commons. This objection we cannot help obſerving is ſomewhat extraordinary, coming from a man in Mr. Frend's ſituation, ſince it goes to the lenity of the ſentence; for the ſtatutes would have warranted the college in puniſhing him, by total expulſion, for an offence of ſuch magnitude as that of which he has been guilty.

We have the honour to be, my lord,
Your lordſhip's moſt dutiful and moſt obedient ſervants,
W. Pearce.
W. Mathew.
J. Plampin.
J. Coſtobadie.
Tho. Bayley.
Thomas Caſtley.

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The profecution in the univerſity now took up the attention of the appellant, ſo that having only curſorily looked over the anſwer, he wrote to the biſhop to excuſe himſelf from replying to it immediately.

My lord,

Mr. Mathew put into my hand yeſterday, by your lordſhip's order, the anſwer of the maſter and certain fellows of the college to my appeal. The ſame motives which led them to condemn me, unheard, in this college, inſtigated them to make part of a cabal to proſecute me in the vice-chanceller's court, and I have been under the neceſſity of appearing in that court four days; where, after a ſtrict examination of fifteen hours, the facts have not been proved which they have miſrepreſented in their anſwer, and on which, after a few minutes converſation, they took on themſelves to paſs a ſentence wholly irrelevant and unjuſtifiable in law and equity.

My accuſers are expected to finiſh their charges on Friday next, and I ſhall be called upon for my defence in the courſe of next week. Your lordſhip is ſenſible that a perſon who has for the laſt three months laboured under the preſſure of every thing which malice and calumny can ſuggeſt, and whoſe attention has been wearied by the fatigue of obſerving the wretched tricks which my accuſers have uſed in attacking me, is incapable of ſitting down immediately to reply to the maſter's anſwer, in a manner worthy of your lordſhip's notice, and I ſhall therefore preſume ſo far on your lordſhip's patience, as to delay the reply till I have completed my defence before the univerſity. As the annals of the univerſity do not preſent an inſtance of a perſecution attended with ſo many circumſtances of malice and ingratitude, and ſo contrary not only to the principles

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of the chriſtian religion, but to every maxim of law and juſtice, I truſt that your lordſhip will, with your uſual kindneſs, accede to the requeſt of a much injured man, and one, who is with great reſpect,

Jeſ. Coll. Camb. My lord,
May 15, 1793. Your lordſhip's very obedient
and humble ſervant.
W. Frend.

The biſhop did not condeſcend to anſwer this letter, but by his ſecretary, allowed three weeks, to commence on May 22d, for the drawing up of the reply. Before the expiration of that term another requeſt was made in the following letter.

My Lord,

I am ſorry to be under the neceſſity of making another application to your lordſhip, to requeſt farther indulgence with reſpect to the time of making my reply to the paper delivered to me by Mr. Mathew. A plain ſtatement of facts will, I flatter myſelf, convince your lordſhip that my requeſt is not unreaſonable.

The vice-chanceller's court was broken up laſt Thurſday, after having ſat eight days, during which, my attention was neceſſarily taken up with the proceedings; and the fatigue I underwent might have borne down men of much ſtronger conſtitutions. On Friday I appealed to the univerſity, and on Saturday the proctor, in the name of the univerſity, inhibited the vice-chanceller from putting his ſentence, which is founded neither in law nor evidence, into execution. I muſt now prepare myſelf to appear before the delegates, and not being by any means recovered from the fatigue of

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the laſt buſineſs, your lordſhip will, I hope, have the goodneſs to allow me a longer time to prepare the reply to be laid before your lordſhip.

It is an unuſual thing that an engliſhman ſhould be thus employed in two different courts, on the ſame ſubject, and I was once in hopes that my perſecuters would have permitted a deciſion to take place in one court before they proceeded to attack me in another. But as they were reſolved to harraſs me to the utmoſt of their power, I have only to commit my myſelf to your lordſhip's protection, and to requeſt that, as to this moment I have not been free from vexation, and am now ſcarce able to take pen in hand, I may be indulged with longer time, or, if it ſhould be agreeable to your lordſhip, I could wiſh to be permitted to delay my reply till the merits of the cauſe, now pending in the univerſity, have been fully and finally diſcuſſed by its delegates. I have the honour to be, with great reſpect,

My Lord,

Your lordſhip's very obedient

and humble ſervant,

Jeſus College, Camb. June 3, 1793. W. FREND.

The biſhop, in return, anſwered by his ſecretary, that he did not think it conſiſtent with a proper attention to the college, and the nature of the buſineſs referred to him, to comply with the requeſt. His lordſhip was, therefore, put to the trouble of receiving another letter.

My Lord,

As the circumſtances already mentioned to your lordſhip have prevented me from giving more than a curſory

glance

glance at the anſwer to my appeal, I am by no means certain what time or trouble will be requiſite for the reply. But if I am not in the mean while called upon by the univerſity, I ſhall do my utmoſt endeavours that it may be with your lordſhip by the end of next week.

I have the honour to be, with great reſpect,

My Lord,

Your lordſhip's very obedient humble ſervant,

June 5th, 1793. W. Frend.

After this the appellant went into the country for a few days to refreſh himſelf a little from the fatigues of academical ſtrife, and on his return to college took up the anſwer of the maſter and his fellows, and, ſurprized to find it ſo weak and trifling, drew up, in a couple of days, his reply, which he ſent, accompanied with the following letter, to the biſhop.

My Lord,

Incloſed is my reply to the anſwer of the maſter and five fellows of this college. Had I, on the receipt of it, read it twice over, your lordſhip would not have been troubled with any requeſts from me for time to conſider it. I remain with great reſpect,

My Lord,

Your lordſhip's very obedient humble ſervant,

June 14, 1793. W. Frend.

The abſence, it is preſumed, of his ſecretary, put his lordſhip to the trouble of writing an anſwer to the above in the following words.

The biſhop of Ely received, by yeſterday's poſt, Mr. Frend's reply to the anſwer of the maſter and fellows of his

his college to his appeal againſt their ſentence. His lordſhip deſires Mr. Frend will deliver a copy of the reply to the maſter and fellows for their conſideration.

June 20th, 1793.

In obedience to this order, as the maſter was abſent, a copy of the reply was given to the preſident of the college.

REPLY.

My Lord,

The anſwer to my appeal is ſigned, I perceive, by the maſter and five only of the fellows, who agreed to remove me from the college: from whence I conclude that the ſixth fellow being fully ſenſible of his errour, in acting in ſo unwarrantable a manner againſt one of his ſociety, refuſed to be any farther connected with thoſe by whom he had been miſled. I am not ſurpriſed that the five fellows ſhould praiſe themſelves for their lenity; ſince they had ſent to your lordſhip an accuſation very different from the reſolutions entered into at the meeting of the third of April, and had beſides been moſt of them part of a cabal, to deprive me of my degrees, and to baniſh me from the univerſity. It is no wonder that they ſhould talk of lenity, who regard as of little moment the inconvenience which a man of letters muſt feel, by being deprived of the calm repoſe requiſite for ſtudy, and of acceſs to the rich repoſitories of learning in this place: but their language in my opinion is inſolence in the extreme, and adds inſult to injuſtice.

I have ſaid that the maſter and fellows ſuppoſed me to be the publiſher of a certain pamphlet, and they have now laid before your lordſhip the evidence by which they were guided. It is the boaſt of engliſhmen, that the accuſed perſon ſhould be confronted with the wit-

neſſes, but, as in this inſtance a different conduct was purſued, it is no wonder that the pretended judges ſhould not only fall into errour, but ſhould preſent with the utmoſt confidence ſuch errour to your lordſhip.

I do declare, and am ready to atteſt upon oath, that in the evidence laid before your lordſhip, there is an abſolute falſehood.

The maſter and the five fellows confeſs, that no exceptionable paſſages were pointed out, and, in excuſe, refer to the general tenour and tendency of the whole compoſition. What may be their ideas of the tendency of any work, it is not neceſſary for me to enquire. I do not conceive them to be competent judges of my writings, nor ever intend to govern myſelf by their notions of compoſition. In the moſt wretched inquiſition that the world has ever ſeen, ſuch a pretext for puniſhing a man has never been held forth. Some ſpecifick charges have been brought againſt the accuſed perſon, and whether the crimes were real or fictitious, the diſciples of St. Dominick carried on the appearance of juſtice. Even the perſecuters of Galileo did not think the tendency of his philoſophy a ſufficient cauſe for confining him in priſon. They brought forward the charges on which he was condemned, namely, for contradicting the ſcriptures and violating the laws of the holy ſee. To remove a man from college on the ſuppoſed evil tendency of his publications, is to open a door for the worſt of perſecutions. The firſt printed bibles in England were burnt, becauſe of their ſuppoſed dangerous tendency, and if this pretext were allowed, ſtudents muſt hereafter ſhut up their books, leſt, if, by a regular attention to college duties, they ſhould offend ſome of the body who might be notorious for a diſregard of all order and decorum, the publiſhing of a book ſhould render them obnoxious to every ſpecies of vindictive malice and reſentment.

Under

Under this head, I beg leave to offer to your lordſhip's conſideration the following hiſtorical fact, which ſhews, in the ſtrongeſt manner, the ſenſe of the whole bench of biſhops, on a ſimilar occaſion. In 1701, the lower houſe of convocation took into conſideration biſhop Burnet's Expoſition of the thirty-nine articles of the church of England; and coming to ſeveral reſolutions upon it, laid them before the upper houſe, which proceeded, among others, to the following concluſion: 'That the lower houſe of convocation's cenſuring the book of the biſhop of Sarum, in general terms, without mentioning the particular paſſages on which the cenſure is grounded, is defamatory and ſcandalous.'*

The reaſon for not pointing out the particular ſtatutes againſt which I am ſuppoſed to have offended, is ridiculous and puerile in the extreme. The ſtatutes are given us as a rule of conduct, and to prevent arbitrary proceedings: I have ſworn to obey theſe ſtatutes, and to ſubmit to a puniſhment according to the ſtatutes, but not to any other. The college has certainly a right to puniſh a member for an offence 'contra bonos mores,' but the offence is puniſhable only according to the ſtatutes. Any puniſhment, not authoriſed by the ſtatutes, a fellow of this college is not bound to ſubmit to; and if the maſter ſhould pretend to enforce it, he does it under the peril of perjury: for he has taken an oath to govern according to the ſtatutes. This ſubject has been well ſtated in the proteſt laid before your lordſhip by three of the fellows preſent at the meeting on the third of April. 'We conceive, that the maſter and fellows have not a power of puniſhing any fellow of the college, till it is clearly proved that he has offended againſt ſome one of the college ſtatutes; and that then they are empowered to inflict only ſuch puniſhment as the ſtatute requires.'

* See Hiſtorical eſſay upon the government of the church of England, by George Reynolds, LL.D. archdeacon of Lincoln, p. 194.

I have ſaid, that I had no opportunity of vindicating myſelf from the ſuppoſed charges; and the maſter and the five fellows refer your lordſhip to ſome courſe of proceedings, which not having ſeen I might invalidate, by repeating only my former aſſertion. But it is very extraordinary that the maſter and the five fellows ſhould pretend to ſay, that I had three opportunities offered of making my defence, when three of the other fellows, who were preſent with them during the whole of the time, declare, as one reaſon for diſſenting from the reſolution of removing me from the college, that I had no opportunity given of vindicating myſelf. Their words are, 'It appears to us to be repugnant to the principles of juſtice, and contrary to the rules obſerved in every court, to paſs ſentence on any perſon before he has had an opportunity of anſwering to the particular charges brought againſt him, which, in the preſent inſtance, was not allowed to Mr. Frend.' In addition to this evidence, given by three very reſpectable members of our college, one of whom is a tutour, and exemplary in the diſcharge of every part of that office, I do declare, and am willing to atteſt upon oath, that the account delivered to your lordſhip is founded on a groſs miſrepreſentation.

The maſter and the five fellows aſſert, that their ſentence, for ſuch they call their reſolution, was virtually paſſed, by a majority of the fellows; and, as a proof, alledge, that a majority of the fellows being preſent at the meeting, and the major part of that meeting having concurred in the ſentence, ſuch ſentence is valid, and to be conſidered as paſſed by the whole meeting, though ſome of the fellows expreſſed their diſſent to it. The conſequence of this reaſoning is, That if a maſter of the college, regardleſs of his duty and his oath, ſhould make a party amongſt the fellows to injure another, ſhould cloſet five of the fellows, and, by promiſes, ſolicitations, or threats, bring them over to his purpoſe, he may drive

any

any perſon from the college, of whom, through prejudice, he has conceived a bad opinion, or from whoſe fall he expects to derive an advantage. But the authour of the ſtatutes was not ſo inattentive to the liberty and independance of the fellows; he was aware of the abuſes which in general prevail in bodies of this ſort, and would not permit a perſon to be expoſed to the continual injuries which he might receive from the intrigues of a maſter, and five fellows. The ſmaller crimes have puniſhments aſſigned to them, to be inflicted by the maſter or preſident, and dean: the greater crimes, by the maſter, and majority of the fellows. Biſhop White's interpretation cannot apply to this caſe; for it was made for the relief of the fellows in certain caſes, in which, from the inconvenience or impoſſibility of aſſembling all the fellows, the college might be liable to ſuſtain ſome detriment; but in his interpretation there is no reference to any ſtatute on puniſhment, and it is confined ſolely to three ſtatutes which limit certain elections with reſpect to time. In the preſent inſtance, there can be no reaſon for not expecting the concurrence of a majority of the fellows, if the ſentence were juſtifiable; ſince the meeting was not confined to any particular time, and the maſter was veſted with ſufficient authority to bring all the fellows together. As there was more than a majority of the fellows preſent, and only ſix concurred in the reſolution of removal, the proper mode of arguing is, that not only thoſe four who diſſented from the reſolution, but all the reſt who did not appear diſapproved entirely of the maſter's conduct, in pretending to call the fellows together on a ſubject, in which it is evident they thought themſelves not at all concerned. For I cannot allow the maſter and fellows of this college any right to decide on the merits of a work written by one of their body. The ſtatutes give them no ſuch power, and if a fellow of the college ſhould, by printing or publiſhing, act contrary to the laws of the realm, he is in common with other engliſhmen,

gliſhmen, liable to be brought before the tribunal of juſtice.

Inſtead of anſwering my laſt objection, and pointing out the ſtatute which warrants their reſolution of removal, the maſter and five fellows are content with ſaying, that the college could paſs ſuch a ſentence under that general and neceſſary authority which it poſſeſſes in all caſes of diſcipline, whether ſpecifically deſcribed in the ſtatutes or not. But, unfortunately for them, I have taken an oath to obey, and will obey only in thoſe caſes preſcribed by the ſtatutes, and the ſame oath which obliges me to obey only in certain caſes, is a ſufficient proof that the college can demand obedience only in thoſe caſes.

The puniſhment of a fellow, by a temporary removal from his college, is not known in the univerſity, except in thoſe colleges, in which it is enjoined by their ſtatutes, and I have good reaſon for ſaying, that the aſſertion of the maſter and five fellows, concerning the frequent practice of ſuch amotion in the univerſity at large is without foundation. But were this true in other colleges, we are to be governed by our own laws, not by the laws or practice of any other community. Where the puniſhment of removal is ſtatutable, the inflicting of it ſuperſedes the duties required by the other ſtatutes. On this principle the ſuſpenſion of a clergyman ab officio, is perfectly conſiſtent with his general obligation to diſcharge the duties of his office: ſuch obligation being only conditional, and dependant on his own conduct, and the judgment of his ſuperiour. But would your lordſhip think yourſelf juſtifiable in aſſuming a diſcretionary power of baniſhing a clergyman from his living, who, by his oath, is obliged to reſidence, ſuch puniſhment not being enjoined by any law of the church? There is no inconſiſtency between the two ſtatutes pointed out by the maſter, and the five fellows. To make ſuch inconſiſtency,

they

they muſt ſuppoſe, that the fellow, who, in virtue of the latter, ſhall be put out of commons, is not obliged by the former to dine in the hall at his own expence; or if any ſuch inconſiſtency ſhould be allowed, it is certainly not a ſimilar one, as it ariſes from an expreſs injunction of the law-maker. And, if the founder of the college had thought fit, among other puniſhments, to appoint that of temporary removal, and to add, that it might be inflicted by the maſter, and ſix of the fellows, there would be no doubt of the obligation on every fellow to comply with it; but as the maſter, and the five fellows, have not brought the leaſt ſhadow of a proof that this is the caſe, my objection remains in full force.

On the whole, I cannot help obſerving to your lordſhip, that the maſter, and the five fellows, have failed in their anſwer to every one of my objections. Being ſenſible of the weakneſs of their cauſe, and the badneſs of their arguments, they pretend to talk of the lenity of their ſentence, and of the ſituation in which they ſuppoſe me to be placed. The offence, of which they conceive me to be guilty, is an ideal one; the ſtatutes would not have warranted them in puniſhing me by total expulſion; and if they had, the exchange of expulſion for a temporary removal, muſt, on my part, have been optional. So far from giving the maſter, and five fellows, any credit for their lenity, I conceive them to have done the utmoſt in their power, for which they imagined that they had the leaſt ſemblance of a pretext, and the injuſtice of their conduct is apparent in the total irrelevancy of their ſentence. For, what has the publiſhing of a book, containing ſpeculative opinions, to do with the behaviour of an individual? What miſbehaviour could they ever charge me with? What certificate of good behaviour do they require? What proofs will ſatisfy Mr. Plampin, who is a tutour in the college, and notorious for neglect in the moſt material part of his office, that of giving lectures?

If proofs were requiſite, I could bring them ſigned by the moſt reſpectable members of this univerſity, and the firſt literary characters in the kingdom; and I ſhould have the utmoſt contempt for myſelf, if my character could be in the leaſt hurt by any imputation which the maſter, and the five fellows, have endeavoured to fix upon it. Inſtead, therefore, of requiring a certificate of my good behaviour elſewhere, let them firſt produce ſome proofs of my miſbehaviour during my reſidence among them; and if they could do that in a ſatisfactory manner to your lordſhip, the conſequences are well known. As to this worſe than inquiſitorial manner of proceeding, by examining witneſſes without confronting them with the accuſed, by refuſing to hear a man in his own defence, by condemning him without pointing out the ſtatute againſt which he has offended, by paſſing a ſentence which is totally illegal, and has no connection with the ſuppoſed crimes, I am perſuaded it muſt be as diſguſting to your lordſhip, and every other liberal mind, as it is to, my lord,

Your lordſhip's very obedient ſervant,

W. Frend.

On the 16th of July, the maſter of the college called a meeting of the fellows, and in it read to us a paper which he profeſſed to have received from the biſhop of Ely, and on the twenty-ſixth of July, it was copied into the order-book of the college, as appears from the following extract:

July 26, 1793.

At a meeting of the maſter and all the fellows reſident in college, Mr. Frend having appealed to the viſitor againſt the ſentence contained in the foregoing page, and the viſitor having diſmiſſed the appeal, and affirmed the ſentence in the following words:

To

To the reverend the maſter and fellows of St. Rhadegunde, or Jeſus College, in the univerſity of Cambridge,

Gentlemen,

I have carefully peruſed the appeal of the reverend William Frend*, of your college, againſt the proceedings had and ſentence paſſed upon him, as publiſher of a pamphlet, entitled Peace and Union recommended to the aſſociated bodies of republicans and anti-republicans; by the maſter and major part of the fellows of your ſociety, together with the anſwer of the ſaid ſociety, and the reply of the appellant, and the ſeveral documents therein referred to, and having duly deliberated thereupon, I diſmiſs the ſaid appeal, and affirm the ſentence of amotion.

I am,

Gentlemen,

Your conſtant well-wiſher,

JAMES ELY, viſitor.

July 13, 1793.

Agreed, that if Mr. Frend does not quit the college according to the ſentence, that no time ſhould be loſt in enforcing the ſentence in the manner pointed out by Sir William Scott, in an opinion given by him on this occaſion.

W. Pearce, maſter.
W. Mathew.
Tho. Bayley.

Mr. Frend was not at that time in college, but the maſter informed him by letter, that on the ſecond of Au-

* Mr. Frend excuſes the biſhop, for giving him a title to which he lays no pretenſions, and which ſhould be confined to clergymen only.

guſt, admiſſion into the college would be denied to him. On that day Mr. Frend returned to college, and about twelve o'clock received an intimation in writing from the maſter, that the college ſervants were prohibited from ſupplying him in future with any neceſſaries. Between three and four he went, according to a previous engagement, into the town to dinner, and ſoon heard that, immediately upon his going out, the college gates were all ſhut. About ſeven he went down to the college, found the great gate ſhut, rang the bell, and, on the porter's opening the gate, walked in, and in a tone of authority, reprimanded the porter for ſhutting the gates at ſo unſeaſonable an hour. From thence he went to the lodge to expoſtulate with the maſter on the abſurdity of theſe proceedings, and not finding him at home, left a note, to deſire the maſter to declare, whether the gates were ſhut by his order or not.

After having thus ſhewn his perfect contempt of the maſter's orders, he returned to his friend's houſe, and ſpent only one morning afterwards in college. On the twenty-ſeventh of September, indeed, he intended to reviſit the college, but found that Mr. Plampin, from the malignity of whoſe zeal nothing elſe could be expected, had taken the precaution to order the gates to be ſhut, and an iron chain to be kept acroſs the great door. So contemptible a warfare, muſt degrade the authours of it in the eyes of every impartial man: for, if the maſter and his cabal had been conſcious of the rectitude of their cauſe, there would be no need of chains and locks, to keep out an individual; but having no idea of propriety, or the reſpect due to a member of the college, and to the publick at large, they were ſatisfied with a wanton exerciſe of power, and neither their oaths, nor the meaning of ſtatutes, came in competition with the meanneſs of revenge, and the gratification of low intrigue.

With

With the conduct of theſe men, it is but juſtice to contraſt, for the credit of the college, that of others, who reſiſted the violence of their proceedings. The proteſt ſent to the biſhop of Ely, by three of the fellows, comes from men deſerving of reſpect, as well for their literary attainments, as the probity of their characters. Though they proteſted againſt the conduct of their colleagues, they did not approve of ſeveral paſſages in the obnoxious work, but they made a true diſtinction, by ſtanding up for the rights of every member of the college, which were ſo indecently violated by the maſter and his faction. It is the duty of an authour, to give his ſentiments with freedom to the publick; and the approbation or diſapprobation of that publick ought not to be the rule of his conduct. By ſuch a rule, Mr. Frend is certainly not guided, who writes to inform, and to inſtruct: who knows, that the judgement of cotemporaries is not always the criterion of excellence, or certainty; and that an attack on prejudices muſt be ſubjected to the retort of diſapprobation. The proteſters had the ſame right to expreſs diſapprobation, as the authour to favour contrary ſentiments: thoſe only are in fault, who would injure a man for a difference of opinion. The ſhort interval of twenty years will confirm, or confute the preſent diſcordance of opinion on a book, written certainly with the intention of producing general good; and let it be recollected, in the mean time, that the works of Locke, which are now the text of the univerſity, were once the object of general cenſure.

Of the three proteſters, Mr. Newton is a tutour of the college, and in the exerciſe of his collegiate and academical duties, has always been a perfect contraſt to his colleague. Mr. Newton is aſſiduous in giving lectures, is attentive to his pupils, is exemplary in his conduct, and employs his leiſure hours in literary and philoſophical occupations. Mr. Whitehead's

head's claſſical merit was diſtinguiſhed by academical honours, and he is now the much reſpected maſter of Sevenoaks ſchool. Mr. Otter's application to mathematicks was crowned with ſucceſs, and the ſtation he holds in the family of a nobleman, who fills the higheſt ſeat in the univerſity of Oxford, is a ſufficient proof to thoſe, who know it not from perſonal acquaintance, of the excellence of his character. On the ſix fellows in oppoſition, let others enlarge; but as they took upon themſelves to ſpeak in contemptuous language of the behaviour of Mr. Frend, it was neceſſary to ſhew, that their conduct was reprobated by the beſt members of the college. From the three gentlemen above-mentioned, Mr. Frend never ſolicited the leaſt favour in his cauſe; their conduct was entirely the reſult of their own feelings, and will always do them honour; they acted as becomes independent men, who are perſuaded, that they have no right to proceed to collegiate cenſures, unleſs the infliction of them is authoriſed by the ſtatutes of the college.

It is now time to return to the univerſity. In conſequence of the reſolutions made at the vice-chanceller's lodge, Mr. Frend was ſummoned to appear in the vice-chanceller's court, and during a month, in which there were eight court days, the trial was pending. From the ſentence of that court, he appealed to the univerſity; and this ſtep will, to a ſuperficial reader, ſeem extraordinary, ſince in his proteſt, he declared, that there could be no appeal from a ſentence founded on the ſtatute on which he was condemned, except to the courts of Weſtminſter-hall *. This is ſtrictly true; and if, after an examination of the ſuppoſed offence before the vice-chanceller and heads in the proper place, he had refuſed to

* See page 6.

comply

comply with their terms, the univerſity could not have interfered: but, as the cauſe was tried in the vice-chanceller's court, an appeal to the ſenate was not only ſtrictly in form, but abſolutely neceſſary. Without ſuch an appeal, on application to the court of king's bench, the anſwer of the vice-chanceller would have been: The cauſe was tried in the vice-chanceller's court, from which, if any faults have been committed, an appeal lies to the univerſity. Such an appeal would then have been diſmiſſed, with this anſwer: You ought, according to the ſtatutes, to have appealed, within two days after the ſentence; it is now too late, the ſentence of the vice-chanceller is irreverſible.

On theſe grounds the appeal was made; but every one was aware, that it could not be otherwiſe of ſervice, than as preparing the buſineſs, if neceſſary, for the courts above. What probability was there of impartial delegates being choſen? To omit that they were named by one of the heads, who had co-operated with the vice-chanceller in ſigning the ſentence, the cabal had determined, that no perſon ſhould be choſen, who was likely to decide with impartiality. Without entering at preſent on the character of Sir W. Wynne, his office under the executive government rendered him unfit for the charge impoſed upon him: and it was not to be imagined, that after the outcry, lately raiſed againſt every man of liberal opinions, and artfully kept up by the minions of corruption, a king's advocate, and a privy counſeller, ſhould enter upon the inveſtigation of this cauſe, with the eſſential quality of a judge, a mind open to truth, unbiaſſed by party, and free from prejudice. Dr. Seale was ſtill more improper, as he had not only taken a decided part, but at the very time the preſervation of his fellowſhip was depending on an appeal before the vice-chanceller. It is needleſs to ſay any thing on the other three; but from their connections with the cabal, or their offices in the univerſity, there was not the leaſt doubt of their mode

of

of judging. Inſtead of giving, as they ought to have done, their opinions ſeparately, they left every thing to Sir W. Wynne, who, in a ſpeech of conſiderable length, written, we are to believe, if we have faith enough, after the cauſe had been heard, gave the unanimous judgment of himſelf and brethren. How five perſons could, within the hours of two and ſix, examine a variety of papers, concur ſo eaſily, and draw up their opinion, muſt puzzle any one unacquainted with the mode of conducting theſe affairs: but every ſeaman in the britiſh navy would rejoice to hear, that the ſame rapidity of deciſion were to become the practice in thoſe courts of civil law, which are now permitted to batten on the ſpoils of victory *.

But it may be aſked, what became of Mr. Frend, in conſequence of the confirmation of the ſentence? He appeared at the commencement as uſual, and heard a virulent declamation in bad latin from Dr. Kipling, who, though he can ſpeak ſcarce ten words together in engliſh, addreſſed in his jargon a formal prayer to the ſupreme being on the ſucceſs of his late labours: while, from his attitude, and eyes fixed on the top of the ſenate houſe, the audience conceived, that he was enjoying the raptures of another beatifick viſion †, and graſping at an ideal mitre, as the reward of his ſtrenuous exertions. The kiplingian harangue had the ſame effect on Mr. Frend, as on the other hearers; he was called exul et extorris; but theſe epithets ſeemed rather inapplicable, when the exile was ſtanding at the profeſſour's elbow. This was, however, no fault in the ſpeaker; the ſpeech had been for a long time written down, and the preſence of the

* Sir W. Wynne holds a conſiderable office in the court of admiralty.

† At a former commencement, this angelick doctour, for ſo he has been named, from a compariſon drawn between him and St. Thomas Aquinas, amuſed the wags of the univerſity with his account of a nocturnal viſit from alma mater to her favourite ſon.

exile

exile was neither expected, nor desired: it was hard, that Mr. Frend should, in defiance of the speech, walk up and down the senate house as usual, and laugh at him and his folly. After a three week's residence longer in college, Mr. Frend retired to the hospitable mansion of his friend Mr. Hammond, under whose quiet roof, he soon recovered from the fatigues of academical warfare.

In this retirement, the uniform support, which he had received from the most respectable members of the university, naturally filled his mind with pleasing reflections. He can never forget the kindness of his three friends, Mr. Tyrwhitt, Mr. Lambert *, and Mr. Jones †. They accompanied him into court, sat down at his table, assisted him with their advice, and enabled him to oppose with fortitude the attacks of the cabal. Their characters stand much too high in the opinion of the university, to be elevated by any commendation in this place; but it may be permitted to say, that all good men rejoiced, and the bad were abashed, at seeing their ability and integrity opposed to the spirit of persecution and meanness. The ill health alone of Mr. Marsh ‡, prevented him from being of the number: but the step, taken by him in an early stage of the business, though unauthorised by Mr. Frend, proved the sincerity of that friendship, which had been long cemented between them. To Mr. Reynolds ||, thanks are justly due, who, on the day of defence, put on his gown again, and, by sitting at the table of the accused party, gave another testimony of that zeal for the cause of liberty, which has uniformly ani-

* Senior fellow and bursar of Trinity college.

† Head tutour of Trinity college.

‡ Fellow of St. John's college, whose learning is conspicuous in the notes to his late translation of Michaelis's introduction.

|| R. Reynold's, Esq. of Paxton, in Huntingdonshire.

mated him through life: and his nephew * is intitled to ſimilar acknowledgements, for numberleſs kind offices during the whole of the trial. To enumerate all the teſtimonies of regard which this cauſe excited, in favour of an injured man, would appear oſtentatious; but they will always live in a grateful memory, and both conſole him for the troubles which he has undergone, and reſcue the univerſity from the opprobrium, to which, from the conduct of the twenty-ſeven, it muſt otherwiſe for ever have been expoſed.

The publick is now left to form its judgement on the proceedings both of the college and the univerſity: it is incumbent only on the accuſed party to ſtate briefly the reaſons for his mode of defence. Being firmly perſuaded, that the attack made on him, was the reſult of faction and intrigue, he was not to be awed by the ſuperiority of numbers, nor the treachery of the aſſailants; but, leaving them to the uſe of thoſe arts, which a mind formed for literature muſt always deſpiſe, he was reſolved not to decline the combat, but to enter the liſts at the proper time, armed with confidence in the juſtice of his cauſe, and a knowledge of the laws of the univerſity. On theſe principles he obeyed the ſummons into the vice-chancellor's court; but by his proteſt, and by ſtopping the proceedings of the firſt day, he made it evident, that both the judge, and the accuſers, led away by the deſire of gratifying revenge, were little qualified for their reſpective offices; and, at the ſame time, he confounded the murmurs which had been artfully raiſed by his enemies, and too eaſily acquieſced in by ſome of his friends, that he ought to come forward boldly, and avow himſelf the authour of the work. Theſe objecters did not conſider, that he came into court on a ſummons which

* Mr. Laurence Reynolds, B. A. of St. John's college.

he

he ſuppoſed illegal; that the articles of accuſation anſwering to an indictment in the common proceedings of law, were not known to him till he appeared in the court; and that it would have been abſurd to determine the particulars of his conduct, or to have made them known, before he had ſeen of what he ſtood accuſed. He therefore availed himſelf of the law of the univerſity, which very properly orders, that the accuſation ſhould be delivered on the firſt, and that no witneſs ſhould be called till the ſecond, court day. Of this law the vice-chanceller and the accuſers had till that time probably never heard; and they did not ſee the propriety of it, both from their ignorance of the civil law in general, and their inattention to the circumſtance, that the defendant receives a copy of the articles only on the firſt day of appearance.

There was not a perſon in court who entertained the leaſt doubt that Mr. Frend was the authour of the book in queſtion; but as the cabal had no right to interfere with his publications, except they had the ability to anſwer them, he determined, that, in endeavcuring to prove this point, they ſhould expoſe their folly to the utmoſt. That they failed in their endeavours, is no wonder; and that the learned accuſer ſhould make ſo contemptible a figure, when he came to the obnoxious paſſages in the book, did not ſurpriſe any one, who had ſeen him in the pulpit at St. Mary's, or in his chair in the divinity ſchools. The charges are contemptible in the extreme, and do not attack thoſe points, on which Mr. Frend might have reaſon to expect the cenſures of the church: and, in peruſing his defence, the reader is to carry in mind, that the reply is made to the propoſitions in the articles; and though the authour ſhould maintain a variety of ſentiments, which his accuſers may think obnoxious to the ſtatutes, ſtill, if they are not expreſſed in the articles, they cannot be made the grounds

for punishment. Thus, on the charges relating to idolatry, and ecclesiastical ranks, the answer in plain language given in court was, that they were false; and on more mature deliberation, the authour repeats his declaration, and calls upon the twenty-seven to vindicate themselves; and if they have the least spark of honour remaining in them, or regard for their pretended character of men of letters, to reply to the papers on this subject delivered into the vice-chanceller's hands. The other two charges on the liturgy, and the most sacred offices of the church, do not come within the statute, but they are equally entitled to the epithet bestowed on the two former articles. Mr. Frend's objections to the church of England are on very different grounds from those stated in the articles; and he quitted it, not on account of its ranks, or courts, not on account of its offices, not on account of the less important defects of its liturgy, but because the church worships the trinity, and recites a creed under the name of Athanasius, which appears to him a monstrous compound of various figments of metaphysicians and philosophers.

But it has been objected, that the defence should have been conducted in a more serious manner. Had the cause related to the serious concerns of religion, a different mode of conduct would have been pursued; but, from the nature of the case, it was scarcely possible to retain throughout a serious countenance. Did a painter wish to describe persecution in the most ridiculous and at the same time the most odious light, could he choose a better attitude and better colours than those of the promoter before the senate? The english are famous for that species of humour called caricature, but the chief inquisitour with his groupe of familiars, delineated to the life, would exceed the boundaries of the art. The natural insignificance of Jowett, the impotent irascibility of Mainwaring, the blustering of Belward, and the self-importance of Mansell, it is in vain to look for words to

expres.

expreſs. The idea in the ſpeaker's mind was to hold them up to the ridicule and contempt of the audience: to its ridicule, for acting the parts they had undertaken in ſo abſurd a manner; to its contempt, for preſuming to diſturb the peace of the univerſity with their paltry contentions, and, for the ſake of ingratiating themſelves with the higher powers, to aim at the ruin of an individual. But, in giving this ſalutary diſcipline to ſuch characters, he had an eye to a very important part of the community, and he wiſhed to impreſs deeply on their minds the folly and wickedneſs of every attempt, to deprive men of the liberty of canvaſſing opinions with freedom, and to take away the rights of a ſtudious man, becauſe he communicated his ſentiments with the publick. Imperfect as the execution was, the audience went away in general with a lively ſenſe of his leading ideas: on the judges he did not expect to make an impreſſion; for their plan was already formed, and not an angel from heaven, no, not any perſon but a prime miniſter could have produced a change in their reſolutions.

The proceedings of the two courts are given from official papers received from the regiſtrary and bedell, and notes taken down by Mr. Lambert. Mr. Frend's ſpeech was written down by himſelf a few days after the delivery of it, and, though his memory is not very tenacious, he has been enabled by the notes of Mr. Lambert to give not only the order and leading ideas, but in general the very expreſſions uſed. The reader will naturally make allowances for a compoſition confined to the rules of ſpeaking, not of writing, two very different things, and recollect that the latter is to the former what an engraving is to a picture. The inverted commas mark the parts omitted by the regiſtrary, and the official papers are printed exactly as they were delivered, excepting that the names of the heads preſent are omitted after

the firſt day, becauſe no other alteration took place in them than that Dr. Poſtlethwaite was abſent on the 11th, 13th and 17th of May, and Dr. Peckard made his appearance only on the 28th of May. To the defence of Mr. Frend, Dr. Kipling's reply, and the vice-chanceller's ſpeech at the concluſion of the buſineſs in his court, the inverted commas are omitted. They are alſo omitted in the account of the proceedings before the delegates, the only official papers in that court, being the acta curiæ the proteſts of Mr. Tyrwhitt and Mr. Frend and the citation: the reſt was ſupplied by the attention and friendſhip of Mr. Lambert.

That at the cloſe of the eighteenth century there ſhould be found members of the church of England and of the univerſity of Cambridge, capable of carrying on a proſecution on queſtions of controverſy, is matter of extreme regret to the publiſher of this work, as it muſt be to every liberal mind; and, if it were not with the view of deterring every future effort of bigotry and intrigue, he could wiſh, for the credit of his country and his univerſity, that the proceedings, which this publication contains, were buried in oblivion. A proteſtant eſtabliſhment ſhould diſdain the uſe of coercive meaſures, and if attacked ſhould defend itſelf by the force of reaſon, not the arm of compulſion. But, as long as religion is made a ſtalking horſe to places of preferment, neither learning nor philoſophy will prevent many of its advocates or pretended advocates from uniting in the vulgar cry againſt any one, who aſſumes the right of thinking for himſelf and rejecting the dogmas of the prevailing party. Though the twenty-ſeven are in general very deficient in literary merit, and have ſtill leſs claim to theological diſtinction, philoſophy feels herſelf degraded in ſeeing the name of a Wollaſton aſſociated with men of ſuch inferiour characters and groveling minds; and the diſtinguiſhed exertions of the father in the cauſe

of

of religious liberty render more ſtriking the ſon's apoſtacy. From one, whoſe early years were employed in the laborious occupation of mechanick life, the manners of a gentleman and the taſte of a ſcholar are not to be expected, and the diſadvantages under which he laboured, ſufficiently account and apologize for theſe defects in the character of a Milner, while they enhance the admiration of powers, which, without meliorating the heart, have diſtinguiſhed his purſuits in abſtract ſcience. It is not to be wondered at, that he ſhould join in an attack on the freedom of the preſs, which however aroſe from and was purſued by men with very ſmall pretenſions indeed to literature or philoſophy: and the little encouragement they received, will, it is to be hoped, prevent any ſimilar attempts in future. For, however branded the french may now be for atheiſm, the common opprobrium of the early chriſtians, the new article in their code, prohibiting a diſtinction to be made in civil rights on account of religious queſtions, muſt from the nature of things be in no diſtant period adopted not only in this but in every country of the world. Then will a future generation ſcarce credit the report, that a celebrated univerſity was employed, like a ſpaniſh inquiſition, eight days in inveſtigating the queſtion, whether one of its members, for publiſhing ſome remarks on eccleſiaſtical affairs, ſhould be ſubjected to the ſentence of baniſhment.

PROCEEDINGS

PROCEEDINGS

IN

THE VICE-CHANCELLER's COURT.

ACTA CURIÆ.

At a court holden before the right worſhipful Isaac Milner, D. D. vice-chancellor of the univerſity of Cambridge, and Lowther Yates, John Smith, William Craven, Francis Barnes, John Barker, Joseph Turner, Thomas Postlethwaite, Richard Farmer, D. D. and John Fisher, LL. D his aſſeſſors, between the hours of ten and one, on Friday the third day of May, in the law-ſchools of the ſaid univerſity, me preſent,

Geo. Borlase,
Noty. Publ. and Regiſtr.

The office of judge promoted by Thomas Kipling, D. D. agt. William Frend, A. M. fellow of Jeſus college.

ON which day a ſummons, heretofore iſſued againſt William Frend, A. M. and fellow of Jeſus college, was returned by John Beverley, eſquire bedel, who made oath that the ſame had been perſonally ſerved on the ſaid William Frend.

Mr. FREND appeared: and the court was adjourned to the ſenate-houſe. Dr. Colman appeared at the adjourned court; when and where Mr. Frend excepted to the court, in a certain paper, purporting to be a renunciation of the juriſdiction of the ſaid court; which paper he read and ſigned in the preſence of the regiſtrary, who atteſted the ſame, and delivered it to Mr. vice-chancellor. Mr. vice-chancellor, after deliberating with the aſſeſſors, pronounced for the juriſdiction of the court, and ordered Dr. Kipling to bring forward his charge. Mr. Frend deſired that the renunciation might be entered on the records of the court, and that the grace, ‘ Cum ſtatutis academiæ,’ Oct. 24, 1609, might be read; part of which was read by Mr. Frend, Mr. vice-chanceller objecting to the reading the whole at that time, and ſaying it might be read in the courſe of his defence. Dr. Kipling deſired that the charges may be exhibited in writing, which was allowed; and the ſaid charges or articles were read, and a copy of the ſame was ordered by Mr. vice-chanceller to be delivered to Mr. Frend, and was ſo delivered. The firſt article the defendant denied, ſo far as concerns the cauſe in queſtion; which denial was over-ruled by the court. Mr. Frend aſked Mr. vice-chancellor, whether it was over-ruled with the concurrence of the heads. Mr. vice-chancellor declared that it was over-ruled, and is now over-ruled, with the concurrence of the heads.

The ſecond article was then read, and Dr. Kipling propoſed to call witneſſes. Mr. Frend objected to the calling any witneſſes until the ſecundus dies juridicus, and read a part of the grace, ‘ Cum ſtatutis,’ &c. beginning at the words, ‘ ſecundo die juridico,’ to the words, ‘ per reum datis,’ and required time to anſwer, according to the ſtatutes. Mr. vice-chancellor declared

clared that the demand made by Mr. Frend, as founded on the grace aforeſaid, was not good; nevertheleſs he judged it reaſonable to allow him proper time to prepare himſelf, and accordingly adjourned the court to be holden at the ſenate-houſe, on Friday the tenth inſtant, at ten o'clock in the morning, and warned Dr. Kipling and Mr. Frend then and there to appear.

CITATION.

To John Beverley, William Mathew, and Henry Gunning, eſquire bedels of the univerſity of Cambridge, or their lawful deputy or deputies.

SUMMON William Frend, maſter of arts, and fellow of Jeſus college in the univerſity of Cambridge, to appear before me, or my lawful deputy, and my aſſeſſors, at my next court, to be held in the law-ſchools in Cambridge, on Friday the third day of May next, between the hours of ten and eleven in the forenoon of the ſame day, in a certain cauſe of office promoted by the reverend Thomas Kipling, doctor in divinity, and member of the ſaid univerſity, the ſaid cauſe of office or matter of complaint ariſing within the juriſdiction of the ſaid univerſity; then and there to anſwer to an accuſation laid before me, in which the ſaid William Frend is charged with having violated the laws and ſtatutes of this univerſity, (particularly the ſtatute de concionibus) by publiſhing and cauſing to be diſperſed, within the ſaid univerſity, a certain pamphlet, intitled 'Peace and Union recommended to the Aſſociated Bodies of Republicans and Anti-Republicans,' of which doctor Kipling, the above-mentioned promoter of this cauſe, affirms him to be the author,

and in which, according to the accuſation of the ſaid doctor Kipling, religion, as eſtabliſhed by public authority within this realm, and alſo all eccleſiaſtical ranks and d gnities are impugned; and ſo from court day to court day until the ſaid cauſe be ended, and further to do and receive as to law and juſtice ſhall appertain. Hereof fail not at your peril. Given under my hand and ſeal, at Queen's College, Cambridge, this twenty-third day of April, in the year of our lord one thouſand ſeven hundred and ninety-three.

(Signed) I. MILNER, (L. S.)
Vice-Chanc^r.

JOHN BEVERLEY,

[Copy.]

"On the vice-chanceller's calling upon Dr. Kipling to open the cauſe as promoter, Mr. Frend addreſſed the court in the following words, of which he afterwards delivered a copy, legally executed, into court."

"Mr. VICE-CHANCELLER,

"I deſire leave, before my accuſer enters on his office, to offer a few things in the way of objection to the mode of trial adopted by him, and authorized by you: they will, I hope, be found not unworthy of your attention.

"I acknowledge the receipt of a citation from you to attend in this place at this hour, and my preſence here is entirely owing to that circumſtance; but I wiſh it to be conſidered as proceeding more from civility and reſpect, than duty or obligation: the reaſon of which diſtinction will be obvious from what I am going to alledge.

"My

" My accuſer charges me with the publication of a pamphlet, intitled, ' Peace and Union recommended to the aſſociated bodies of republicans and anti-republicans :' and, by ſuch publication, with impugning religion as eſtabliſhed by publick authority within this realm, and alſo all eccleſiaſtical ranks and dignities : and by ſuch impugning, with having violated the laws and ſtatutes of this univerſity, particularly the ſtatute de concionibus.

" Now the violation of the ſtatute de concionibus being made the principal charge againſt me, I apprehend that I ought not to have been cited to appear in the vice-chanceller's court, but before the vice-chanceller and a majority of the heads of colleges, all offences againſt that ſtatute being made cognizable by him and them jointly : and that there is no inſtance of any perſon being cited to appear here for ſuch an offence. The difference between the vice-chanceller's court and a meeting of the vice-chanceller and a majority of the heads of houſes, I ſuppoſe to conſiſt in the following particulars:

" I. The vice-chanceller's court ſubſiſts by antient cuſtom, and charters confirmed by an act of parliament, and ought to be held at ſtated times for the purpoſe of receiving complaints, and hearing and determining cauſes. Whereas the other meeting derives its exiſtence and authority wholly from queen Elizabeth's ſtatutes, and, from the nature of it, can only be occaſionally aſſembled, in the ſame manner that the ſame or other perſons meet occaſionally in the ſenate or other place, for the execution of other parts of the ſame ſtatutes.

" II. The vice-chanceller's court is a court of record, from which no appeal can go to any of the courts in

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Weſtminſter-hall, but only to the ſenate of the univerſity. Whereas I apprehend that no appeal can go to the ſenate from a determination of the vice-chanceller, and heads acting under the ſtatute de concionibus; though ſuch determination, like that of a mayor and aldermen in any civil corporation, may be liable to a review in the court of king's-bench.

"III. The vice-chanceller, ſitting in his court, poſſeſſes the power of puniſhing all offences cognizable in it, without the concurrence of a majority of the heads of houſes, ſuch concurrence being in no caſe neceſſary to enable him to puniſh, but only to puniſh in a particular manner. Whereas in the exerciſe of the power given in the ſtatute de concionibus, ſuch concurrence is in every ſtep made abſolutely neceſſary.

"IV. The immediate object of a citation into this court is puniſhment: whereas the immediate object of a citation before the vice-chanceller, and a majority of the heads, under the ſtatute de concionibus, is not puniſhment, but the revocation of errour.

"V. There is no pretence from the ſtatute, nor from any practice under it, for the appointment or allowance of a promoter, ſuch office being peculiar to eccleſiaſtical courts.

"VI. The vice-chanceller has undoubtedly, in his court, the power of compelling evidence, and that upon oath; neither of which can, I ſuppoſe, be done by him and a majority of the heads, aſſembled for the purpoſe of enforcing the ſtatute de concionibus.

"For theſe reaſons, at leaſt till ſtronger ones to the contrary ſhall be alledged, I think myſelf obliged to renounce

nounce the juriſdiction of this court, and do hereby renounce ſuch juriſdiction, ſo long as the violation of the ſtatute de concionibus is made the principal or any part of the charge againſt me. And though I ſhould, in the firſt inſtance, have willingly ſubmitted to anſwer for any ſuppoſed breach of that ſtatute, before the vice-chanceller, and a majority of the heads of houſes, or before the vice-chanceller in this court, for the breach of any other law of the univerſity, properly cognizable in it, I now deſire time to be adviſed whether, having been wrongfully cited to appear in this court on a ſuppoſed offence againſt that ſtatute, with the acquieſcence at leaſt, if not the approbation, of the heads of colleges, I am any longer liable to a trial for the ſame offence, either before the vice-chanceller and heads, under the ſtatute ſo often mentioned, or by the vice-chanceller alone, under any other law and ſtatute of the univerſity.

" The vice-chanceller, after a conſultation with the commiſſary, retired to the gallery with the commiſſary and heads of colleges: in about half an hour they returned, and the vice-chanceller pronounced for the juriſdiction of the court. Mr. Frend then deſired that the grace paſſed in 1609, on the order to be obſerved in the univerſity courts, might be read; to which the vice-chanceller objected, ſaying, it might be read when Mr. Frend came to his defence. Mr. Frend urged the neceſſity of reading it now, as it directed the whole proceedings of the court: but the vice-chanceller deſired *the* promoter to proceed.

" Then the promoter roſe, and Mr. Frend, riſing at the ſame time, addreſſed the vice-chanceller, and deſired that the accuſer might not be permitted to ſpeak till he had put on his proper academical habit. At this

a violent burſt of laughter and clapping from the audience enſued. The vice-chanceller ſeemed vehemently moved, and looked up to the gallery, as if going to reprimand the young men; but the burſt was over, and the noiſe had ceaſed before the vice-chanceller could ſpeak to order.

"The promoter ſaid, that the vice-chanceller, he ſuppoſed, would be required next to put on his robes too. The vice-chanceller treated Mr. Frend's requiſition as frivolous; and Dr. Kipling began by praying, that the charges might be accepted in writing, and a copy of them, with a copy of the pamphlet annexed, given to the defendant. This was allowed, and the charges were read by the promoter."

UNIVERSITY of CAMBRIDGE, May the 3d, 1793.

In the name of God, Amen. We Iſaac Milner, doctor in divinity, vice-chancellor of the univerſity of Cambridge, and judge of the court of the chancellor, maſters and ſcholars of the ſaid univerſity, lawfully conſtituted and appointed, to you William Frend, maſter of arts, and one of the fellows of Jeſus college in this univerſity, do give and miniſter all and ſingular the articles, heads, or interrogatories under-written, for certain crimes and offences ſaid by you to have been committed, but more eſpecially for having written, publiſhed, and cauſed to be diſperſed within the ſaid univerſity, a book or pamphlet, intitled 'Peace and Union recommended to the aſſociated bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jeſus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793, (Price One Shilling.)' In which ſaid book or pamphlet religion, as eſtabliſhed by public authority within this realm, and alſo all eccleſiaſtical

ranks

ranks and dignities, are impugned: at the promotion of the reverend Thomas Kipling, doctor in divinity, and a member of this univerſity: and we do object and article as follows, (that is to ſay)

In the firſt place, We article and object to you the aforeſaid William Frend, that the univerſity of Cambridge was founded and endowed, and by act of parliament, made in the thirteenth year of the reign of queen Elizabeth, was incorporated by the name of the chancellor, maſters, and ſcholars of the univerſity of Cambridge, for the maintenance of godly literature, and the virtuous education of youth within the ſaid univerſity; and moreover, that the letters patent granted to the chancellor, maſters, and ſcholars of the univerſity of Cambridge, in the third year of the reign of our then ſovereign lady queen Elizabeth, and all other letters patent, granted to the ſaid univerſity by any of the progenitors or predeceſſors of our ſaid queen, were by the ſaid act of parliament declared to be thenceforth good, effectual, and available in law, to all conſtructions and purpoſes: and we object and article the premiſes, jointly and ſeverally, and every part thereof.

2d. Alſo, We article and object to you the aforeſaid William Frend, That in this preſent year of our lord one thouſand ſeven hundred and ninety-three, you did publiſh, and cauſe to be diſperſed within this univerſity, a ſcandalous book or pamphlet, of which you are the author, intitled, Peace and Union recommended to the aſſociated bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jeſus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793; which ſaid book or pamphlet is annexed to theſe preſents, and prayed to be admitted as if inſerted herein: and we article and object as above.

3d. Alſo, We article and object to you the aforeſaid William Frend, That in the twenty-ninth page of the aforeſaid book or pamphlet you have defamed the public liturgy of the eſtabliſhed church, by affirming that ‘ it is very far from the ſtandard of purity in doctrine, which is required in ſuch compoſitions :’ and we article and object as above.

4th. Alſo, We article and object to you the aforeſaid William Frend, That in a paragraph, contained in pages thirty-ſix, thirty-ſeven, and thirty-eight of the aforeſaid book or pamphlet, beginning at the words, ‘ The ſame paſſions,’ and ending with the words, ‘ epiſcopal convocations, you affirm that the publick worſhip of the great body of chriſtians is idolatrous; including in this charge the members of the church of England, as evidently appears from the context: and we article and object as above.

5th. Alſo, We article and object to you the aforeſaid William Frend, That in the thirty-ninth page of the aforeſaid book or pamphlet, you have aſſerted, that ‘ eccleſiaſtical courts, eccleſiaſtical ranks and titles are all repugnant to the ſpirit of chriſtianity:’ and we article and object as above.

6th. Alſo, We article and object to you the aforeſaid William Frend, That you have profanely reviled and ridiculed the moſt ſacred offices of religion, as enjoined by the church of England, and performed by its miniſters, in the following paſſage contained in the thirty-ninth and fortieth pages of the aforeſaid book or pamphlet, (that is to ſay) ‘ The laity, like brute beaſts, ſit tamely under this uſurpation: a man, if a prieſt or miniſter enters, is not maſter of his own houſe; he muſt not thank God for the bleſſings of providence at his own

table;

table; he cannot pledge his faith to a lovely woman without the interference of the prieſt; his offspring muſt be ſprinkled by ſacred hands, and at death he is not committed to his long home without another incantation.

'Theſe ſuperſtitious prejudices are, without doubt, highly beneficial to the intereſt of the clerical community; but the morals of neither party are conſulted. The laity are apt to imagine that there are ſome practices in which they may be indulged without any imputation on their chriſtian character; and the gentleman in black is ſuppoſed to put on a particular ſet of features and behaviour with his clothes:' and we article as above.

7th. Alſo, We article and object to you the aforeſaid William Frend, That at the time of publiſhing the aforeſaid book or pamphlet, you was a maſter of arts and member of this univerſity, and that you now are a maſter of arts, and a fellow of Jeſus college in this univerſity, and therefore notoriouſly ſubject to the juriſdiction of this court; and we article and object as above.

8th. Alſo, We article and object to you the aforeſaid William Frend, That by the laws and ſtatutes of this univerſity, particularly by the forty-fifth ſtatute, intitled, 'De Concionibus:' and by a decree paſſed in the ſenate of this univerſity, on the ninth day of June, one thouſand ſix hundred and three, it is ordained and provided, That all and every perſon or perſons impugning religion, as by law eſtabliſhed within this realm, or impugning eccleſiaſtical ranks and dignities, may and ought to be proceeded againſt, and puniſhed by ſuſpenſion from academical degrees, by expulſion or by baniſhment: and we article and object as above.

 9th. Alſo,

9th. Alſo, We article and object to you the ſaid William Frend, That of and concerning the premiſes, complaint hath been and is rightly and duly made by this party, promovent to this court and the judge thereof.

Wherefore the party promovent in this cauſe prayeth right and juſtice to be done and adminiſtered to him effectually; and that the ſaid William Frend, in regard of his great raſhneſs and preſumption in the premiſes, may be duly corrected and puniſhed as the law requires.

" The articles having been read, Mr. Frend objected to article 1ſt, as far as it concerned the cauſe in queſtion. The vice-chanceller declared that objection already over-ruled by the court.

" Q. from Mr. Frend. By your own authority, or conjointly with the heads?

" V. C. By my own, and the heads as my adviſers.

" Q. Did they concur with you?

" V. C. They did.

" Q. Do they now? The vice-chanceller turned to the bench, and now aſking the heads, declared, They concurred before, and do now.

" The ſecond charge was read by the promoter; and HARVEY ALGER being called as evidence, Mr. Frend objected to the calling of any witneſſes in the part of the promoter on this day, and read a part of the grace of 1609, which directs that the witneſſes ſhould be called only ſecundo die juridico.

" The

" The vice-chanceller ſaid, it was not neceſſary to comply literally with that grace. Being aſked by Mr. Frend, on what account, the vice-chanceller ſaid, That the difficulty of obſerving it would be very great; that it never had been accurately obſerved; that it would claſh with ſome of the ſtatutes, and particularly it would limit the power of ſummary proceedings. Mr. Frend ſtill urging the propriety of its being ſtrictly attended to, was aſked by the vice-chanceller, Do you then inſiſt on the promoter's witneſſes not being called till the ſecond day?

" F. I do.

" V.C. Do you wiſh for time to prepare your defence?

" F. I wiſh for all the time allowed me by the ſtatute. The commiſſary then interpoſed, and ſaid, Theſe witneſſes might be admitted now by the firſt part of the ſtatute. On being aſked by Mr. Frend, What part? he ſaid, That this delay was diſpenſed with, if the cauſe was levior et ordinaria. Mr. Frend aſked, Can that cauſe be called one of the leviores, which may drive the accuſed from the univerſity, and deprive him of his degrees? The commiſſary anſwered, That the diſtinction between leviores and graviores cauſas did not ariſe from the magnitude of the conſequences, but from the eaſe or difficulty of proof.

" F. If you allow it to be a cauſa levior, your proceedings, to be ſure, may be ſummary. The promoter obſerved, the appointment of a ſecond day ſeemed intended as an indulgence to the actor, to prepare, &c. but this indulgence he did not deſire, and was ready to proceed now. Mr. Frend replied, I do not know that the actor is meant to be particularly indulged in this grace. I conceive it to be for the benefit of all parties; and as ſuch I do deſire that the time may be allowed,

lowed, and that the actor may be required to proceed according to law.

" V. C. You desire time, then, for your defence?

" F. I desire the time allowed by law.

"The vice-chancellor then retired with the commissary and heads, to the lobby; and after remaining rather longer there than on the first journey, returned, and desired the registrary to read his notes, which were then altered, in various instances, by the commissary. A long conversation now took place between the vice-chanceller and commissary; after which the vice-chanceller, addressing Mr. Frend, said, that though he did not think his demand for time, as founded on the statute good; yet, as he judged it reasonable to give him time to make his answer, it was allowed: and the court adjourned till Friday, May 10th, ten in the morning, in the same place.

"Mr. Frend desired the court would understand, that he did not, in this demand, mean to make his defence that day: it was appropriated to the examination of the promoter's witnesses, and to that business only he should expect the court to attend."

ACTA CURIÆ.

At a court holden, &c. between the hours of ten and four, on Friday the tenth day of May, &c.

ON the opening of the court, the judge asked Mr. Frend, if he was now ready to answer to the charges laid against him. Mr. Frend declared, that he did not come

come with the idea of anſwering to the charges this day, but that he was ready to act according to the laws of the univerſity, and referred again to the grace, (page 369.)

On which the vice-chancellor ſaid, that as Mr. Frend, on the laſt court-day, urged the neceſſity of adhering ſtrictly to the grace, 369 p. and, according to his own explanation of what is there ſtated, he thought it expedient now to explain his ideas concerning the meaning and authority of it. The vice-chancellor then gave his reaſons at large in ſupport of the preſent proceedings, and explained, according to the beſt of his judgment, in what ſenſe this grace is to be conſidered as obligatory, and in what ſenſe its authority could not be admitted. He ſaid, this court had unqueſtionably authority to proceed more or leſs ſummarily, and in the preſent inſtance he did not yet perceive the ſhadow of a reaſon for departing from the uſual practice. He added, that he was ready to liſten with the utmoſt attention and patience, as long as any thing could be advanced on either ſide. His object was to do ſubſtantial juſtice, and he exhorted both the accuſer and the accuſed to uſe no unneceſſary delay.

Queſtion from Mr. Frend. Whether the judge meant to proceed according to the ſtatute ‘ De Concionibus’ ſimply, or whether that ſtatute made a part of of the law under which the judge was now proceeding?

Anſwer. The judge certainly conſidered himſelf as not acting under that ſtatute ſeparately; but as part of the law under which he would proceed.

Queſtion from Mr. Frend. Whether the judge ſaid this from his own authority, or with the aſſent and conſent of the heads?

Anſwer.

Anſwer. He did not think it neceſſary to anſwer that queſtion repeatedly.

Mr. Frend then proteſted againſt the court now proceeding, as, he ſaid, there was not now preſent with the vice-chancellor a majority of the heads; and therefore he could not proceed to take examination on oath, as long as the ſtatute 'De Concionibus' is made a part of the ſtatutes on which the accuſation is founded.*

Dr. Kipling then read the ſecond article; and the vice-chancellor aſked Mr. Frend, whether he admitted or denied the ſame.---Anſwer. That he had before dedenied them all generally, aſſerting them to be falſe, wicked, and malicious.

Witneſſes were then called on the part of the promoter, viz. Harvey Alger, Philip Life, Rev. Thomas Lloyd, A. M. John Bowtell, and Rev. Charles Dickins, LLD. and the ſame were ſworn and examined, and were alſo croſs-examined by Mr. Frend: and the court was adjourned to to-morrow the 11th inſtant, at twelve o'clock.

FIRST WITNESS EXAMINED, 10TH MAY, 1793.

Harvey Alger was called by the promoter, and ſworn; and a book being put into his hand, depoſed as follows:

Queſtion. Did he ever ſee that book before?

Anſwer. Yes.

Q. Whether he purchaſed it of any one?

A. Yes.

* Dr. Poſtlethwaite, maſter of Trinity college, was abſent on this day.

Q. Of

Q. Of whom?

A. Of Mr. Lunn, the bookſeller.

The commiſſary aſked, "Is that the book that was delivered to Alger?

A. "Yes.

Q. "Has it been in his poſſeſſion?

"Mr. Frend obſerved, that it ought never to have been out of court, and conceives that the commiſſary muſt join with him. Nothing was ſaid in reply."

Q. About what time?

A. On Friday 19th April, 1793.

Q. Who delivered that book into his hands?

A. Mr. Lunn's journeyman.

Q. How does he know that to be the very book he received from Mr. Lunn's foreman?

A. By having marked it on the cover, and by an L for Lunn.

Q. Did he make theſe marks before he delivered the book out of his hands?

A. Yes.

Q. Can he ſay, on his oath, that that is the very pamphlet he delivered into Dr. Kipling's hands the laſt court-day?

A. Yes.

Q. How does he know it to be the very ſame?

A. By the letter L, which he knows to be his handwriting; "and there are other marks."

Q. Whether he looked at the letter L particularly, when he delivered the book into Dr. Kipling's hands the laſt court-day?

A. Yes.

Q. Did he look at it again, particularly when Dr. Kipling returned it to him.

A. Yes.

Q. Had it been in poſſeſſion of any other perſon beſides himſelf, ſince the former court-day?

A. No.

Q. by the commiſſary. "At what time was it delivered to you?

A. "At the cloſe of the buſineſs in court."

Q. from the court. Where does Mr. Lunn live?

A. In Trompington-ſtreet.

Q. to Dr. Kipling. "Have you any more queſtions to aſk?

A. "Not any very material or neceſſary now."

Q. Can he read?

A. Yes.

Witneſs was ordered to read the title of the ſaid pamphlet, and read as follows: "Peace and Union recommended to the aſſociated bodies of republicans and anti-republicans: by William Frend, fellow of Jeſus college, Cambridge. Printed for the author, by P. C. Croft, St. Ives, 1793. Price one ſhilling."

Q. "from Dr. Kipling." Did he deliver the ſame book into Dr. Kipling's hands this morning, as he came into court?

A. Yes.

Mr. FREND croſs-examined the ſaid witneſs.

Q. Whether the witneſs is not Dr. Kipling's ſervant?

A. Yes.

Q. For

Q. For whom did he purchaſe this book?

A. For Dr. Kipling.

Q. With what intention?

A. By Dr. Kipling's deſire. "When Dr. Kipling ordered me to buy it, he did not ſay what was his intention."

Q. When he made the two marks?

A. He made them "in the kitchen" before he took the book to Dr. Kipling.

Q. Why he was induced to make thoſe marks and letter before he gave the book to Dr. Kipling?

A. By Dr. Kipling's order.

Q. How long did it remain in Dr. Kipling's poſſeſſion after the firſt delivery?

A. About two days.

Q. Who delivered it into the witneſs's poſſeſſion at the end of the two days?

A. Dr. Kipling.

Q. For what purpoſe did Dr. Kipling deliver it to the witneſs?

A. Dr. Kipling deſired him to lock it up.

Q. Did Dr. Kipling aſſign any reaſon for its being locked up?

A. No.

Q. Did the witneſs keep it locked up?

A. Yes.

Q. With what intention did he keep it locked up?

A. With no other intention than by Dr. Kipling's order.

Q. By whoſe order did he take the book from the place when it was locked up?

A. By Dr. Kipling's order.

Q. Did he bring the book to court the laſt court-day by Dr. Kipling's order?

A. Yes.

Q. Was this book produced in court?

A. He gave it to Dr. Kipling in the ſenate-houſe yard before he came into court, but cannot ſay what became of it after.

Q. Why it could not have been out of his poſſeſſion between the laſt court-day and this?

A. Becauſe he locked it up as ſoon as he went home, and has always had the key in his poſſeſſion.

PHILIP LIFE, foreman to Mr. LUNN, was ſworn, and depoſed as follows:

Queſtion. Does he know that ſervant of Dr. Kipling's, who was juſt now examined?

Anſwer. He knows him by ſight.

Q. Does he recollect ever delivering to that ſervant a pamphlet, intitled, "Peace and Union," &c. by William Frend.

A. He does.

Q. Does he recollect about what time he delivered it to him?

A. He does not.

Q. Can he ſay whence that pamphlet came which he delivered to Dr. Kipling's ſervant?

A. He cannot.

Q. Had

Q. "Had Mr. Lunn any of thoſe pamphlets in his ſhop on the 19th of April laſt, except the twenty copies which the witneſs himſelf had received from Mr. Frend?

"This queſtion was over-ruled by the vice-chanceller and Mr. Frend, as putting words into the mouth of the witneſs. Mr. Frend ſaid, he prompted the laſt witneſs, and is now prompting this."

Q. Did he ever receive any copies of the pamphlet, intitled, Peace and Union, &c. by William Frend, A. M. from Mr. Frend himſelf?

A. He did.

Q. How many copies?

A. Twenty copies.

Q. On what day?

A. Third of April laſt.

Q. Had Mr. Lunn any copies of this book at that time unſold?

A. Not that he knows of.

Q. Did Mr. Lunn, to the witneſs's knowledge, procure any copies of this pamphlet from any other quarter, between the third and nineteenth of laſt April?

A. Not that he knows of: at leaſt he did not go for any.

Q. At what place did he receive thoſe twenty copies of the pamphlet from Mr. Frend?

A. At Mr. Frend's rooms in Jeſus College.

Q. Why did he go thither for any copies of the pamphlet?

A. He applied to Mr. Bowtell for ſome copies; but Mr. Bowtel had none; but Mr. Bowtell told him, that Mr. Frend had them all.

Q. Was

Q. Was he directed by Mr. Lunn to go to Mr. Bowtell for ſome copies?

A. He was.

Q. What did he ſay to Mr. Frend, when witneſs went firſt to Mr. Frend's chambers?

"Mr. Frend aſked the court, whether ſuch queſtions were proper. Dr. Kipling inſiſted upon the queſtion being aſked, and it was therefore aſked."

A. He cannot ſay exactly what the words were. The purport of them was, that he preſented Mr. Lunn's compliments to Mr. Frend, and, having ſold all the copies of his pamphlet which he had, would thank him for fifty more copies.

Q. Does he recollect whether he aſked Mr. Frend for copies of his pamphlet?

A. He does.

Q. Did Mr. Frend make any anſwer, and what to him, on that occaſion?

A. As near as he can recollect, Mr. Frend ſaid, that he did not think he had fifty copies: but that Mr. Lunn ſhould have all he had.

Q. "Did Mr. Frend, immediately after this, deliver you any copies?------The commiſſary thought this a leading queſtion; and therefore the promoter aſked,"

Q. What did Mr. Frend do immediately after this?

A. When he went to Mr. Frend's rooms, he was not in them. Some little time afterwards he ſaw him ſtanding in the court; when he went up to him, and delivered the meſſage, which he has repeated as near as he could recollect. He then went to Mr. Frend, into his rooms, when he delivered to the witneſs twenty copies of the pamphlet, intitled, "Peace and Union."

Q. What

Q. What did witneſs do with the twenty copies of the pamphlet?

A. He brought them home to Mr. Lunn's ſhop.

Q. "I think you ſaid, you told Mr. Frend." Witneſs mentioned to Mr. Frend, that Mr. Lunn had ſent him for more copies of the pamphlet, becauſe Mr. Lunn had then none remaining in his ſhop,---was this a part of Mr. Lunn's meſſage, or not?

A. As near as he can recollect, it was.

Promoter. "I will explain the purport of my queſtion in a few moments. I wiſh to know whether Mr. Lunn had any unſold on April the 3d. When firſt aſked the queſtion, he ſeemed uncertain; he now ſpeaks poſitively that he had not."

Mr. Frend aſked, "Why he remembered the day when he came to his rooms?

A. "Becauſe I gave Mr. Frend credit in Mr. Lunn's ledger on that day.

Q. "By whoſe inſtructions did you take the memorandums now in your hand?

A. "They are only dates. Mr. Lunn thought it proper for me to take them down."

Rev. Thomas Lloyd, A.M. was called.

"Before Mr. Lloyd was ſworn, Mr. Frend aſked the court, whether a party in the accuſation could be admitted as an evidence in the cauſe, and proceeded,---I underſtand that Mr. Lloyd, now ſtanding in this court, was one of the twenty-ſeven, or of the number which aſſembled at the vice-chanceller's houſe, and there entered into certain reſolutions reſpecting this cauſe. By which reſolutions Dr. Kipling, Dr. Jowitt, Mr. Manſell,

ſell, Mr. Belward, and Mr. Mainwaring, were appointed managers, as I underſtand, to carry on in their names this proſecution: a copy of which reſolutions I requeſted Dr. Kipling to ſend me; but he returned me anſwer, in writing, that he had them not. I ſent a ſecond note to Dr. Kipling, to deſire to know by what means I might procure a copy of theſe reſolutions. He returned me anſwer, in writing, that they were in poſſeſſion of the vice-chanceller. I wrote, between the hours of twelve and one on that day, to the vice-chanceller, and receiving no anſwer, I wrote again, between five and ſix, requeſting, that as my intereſts were very much involved in theſe reſolutions, I might be favoured with a copy of them. Between ſeven and eight the vice-chanceller ſent me word, in writing, that he did not think himſelf authorized to comply with my requeſt. I now again make that requeſt; conſidering the production of that paper as neceſſary to the conducting of my defence in the proſecution of this cauſe, and being fully convinced, whether thoſe reſolutions are to any purpoſe or not in themſelves, that a very bad uſe has been made of them by the twenty-ſeven, to prejudice me in the eyes of the publick, and of the univerſity.

"The vice-chanceller turned to the commiſſary, and after ſome little converſation, addreſſed Dr. Kipling.

"Dr. Kipling, Mr. Frend deſires to ſee the reſolutions: have you any objection to the production of them?

"Anſwer. I leave it to the diſcretion of the court. Court replied, The court cannot direct the conduct of any of the parties. Dr. Kipling, (after a little pauſe) Am I to give a deciſive anſwer? I ſee no reaſon why he ſhould not: I am willing that he ſhould."

Vice-

Vice-Chancellor. "I ſee none. I believe I ſent next day to Mr. Frend, that as ſoon as a regular accuſation was formed, I would ſend them*. I called a meeting of the heads, and it was their opinion that I ſhould not."

Commiſſary. "I will take Mr. Frend's objection fully. Mr. Lloyd is no accuſer before the court, and therefore a competent witneſs."

Mr. Frend aſked: "Mr. Vice-chancellor, is this with the concurrence of the heads?" Anſwer. "They do not object."

"Mr. Lloyd appeared with a pamphlet in his hand, and was ſworn."

Queſtion. What pamphlet is that which he holds in his hand?

"Mr. Frend obſerved, that this looked like connivance. It ſeemed as if the promoter had directed the witneſs to bring the book, that the promoter might aſk him what it was."

Anſwer. A pamphlet intitled, Peace and Union: by William Frend, Fellow of Jeſus College.

Q. Did he purchaſe it, or was it given him?

A. He purchaſed it.

Q. Of whom?

A. Of Mr. Lunn, the bookſeller.

Q. Did he purchaſe it before the third of April, or after?

A. After that date.

Q. How long after that date?

A. On Thurſday eighteenth of April.

* Mr. Frend never received the meſſage.

Q. Can he ſay, on his oath, that is the very pamphlet he bought in Mr. Lunn's ſhop?

A. He can.

Q. Did he receive it from Mr. Lunn himſelf, or his foreman?

A. From his foreman.

Mr. FREND croſs-examined the witneſs.

Q. Was there any agreement between the witneſs and the promoter to appear with a pamphlet?

A. He was aſked by Dr. Kipling, if he had any objection to appear, and had none. "It was a voluntary act." The ſame principle which led him to petition for the proſecution, led him alſo to take the part which he now does in it. He had no objection to purchaſe a pamphlet for the expreſs purpoſe of appearing againſt Mr. Frend, and to bring home the charge, "and convict him of publiſhing."

Q. Was there any agreement between witneſs and Dr. Kipling, concerning a regular plan of purchaſing, "keeping, and exhibiting the pamphlet before this court?"

A. Dr. Kipling "certainly" ſuggeſted to him to take every proper method for identifying the pamphlet, and qualifying himſelf as a witneſs on this occaſion.

Q. Whether he was one of the twenty-ſeven, or a greater or leſs number, who met at the vice-chancellor's, and entered into certain reſolutions reſpecting this cauſe?

A. He has the honour of being of that number, and thanks Mr. Frend for making that known.

Q. Did he vote for Dr. Kipling being chairman on that occaſion?

A. He did.

Q. Did

Q. Did he the witneſs debate on the mode of proſecution on that occaſion?

A. The plan was not finally ſettled on that occaſion: there certainly was a debate.

Q. By whoſe direction did the witneſs go to the houſe of Mr. vice-chancellor on that day?

A. He thinks it was in conſequence of a meſſage from the vice-chancellor, but is not very poſitive, and believes it was.

Q. Did witneſs vote for the five managers?

A. He does not think it came to a regular voting.

Q. Were they nominated?

A. There were names mentioned.

Q. Was there any queſtion of depriving Mr. Frend of his property, at that meeting?

A. He rather thinks that it was hinted by ſome preſent, that a proſecution might go to that, but that it was not a neceſſary conſequence; and the queſtion was, Whether the college might not, on account of the univerſity's proſecuting, proceed to exclude him from his fellowſhip? but he does not pretend to be accurate. "He cannot anſwer for his memory, as he did not come to anſwer this."

"Mr. Frend. Certainly: I ſuppoſe you came for a very different purpoſe."

Q. Was it not ſaid, that to deprive Mr. Frend of his property, was a matter of comparatively ſmall moment?

A. He does not recollect that remark.

"Mr. Lloyd gave in his copy, and the promoter deſired that it might be identified to be a duplicate of that already in court."

Mr. LIVE called in again.

Queſtion. Whether he recollects a pamphlet being ſold to Mr. Lloyd, intitled, Peace and Union.

Anſwer. He does.

Q. Does he recollect whether it was ſold to him after the third of April, or before?

A. He thinks after.

Q. from the court. How comes he to recollect telling that pamphlet to Mr. Lloyd?

A. By Mr. Lloyd's writing his name in it.

Q. Being ſhewn a pamphlet, and aſked if that was the ſame.

A. It was like it, but he was not ſure that it was the ſame, and that he has no circumſtance fixed in his memory which will enable him to ſay, with certainty, that the pamphlet was really ſold to Mr. Lloyd after the third of April; and did not remember that it was dated; and the pamphlet's being dated is the ſole circumſtance which leads him to ſuppoſe that it was ſold then.

Mr. FREND croſs-examined the witneſs.

Q. Why he remembers the day when he ſaid he came to Mr. Frend's room?

A. Becauſe he gave Mr. Frend credit for twenty copies in Mr. Lunn's ledger.

Q. By whoſe inſtructions he took the memorandums he has in his hands?

A. Mr. Lunn directed him to take thoſe memorandums.

Witneſs

"HARVEY ALGER" witneſs again examined by Dr. KIPLING.

Q. Is he in poſſeſſion of a copy of the pamphlet intitled, Peace and Union, by Mr. Frend.

A. Yes.

Q. Where did he purchaſe it?

A. Of Mr. Bowtell.

Q. About what time?

A. Friday nineteenth of April laſt.

Q. from Mr. Frend. Whether he bought a ſecond copy by direction of Dr. Kipling?

A. He bought both books by direction of Dr. Kipling.

JOHN BOWTELL, ſen. called and ſworn.

Queſtion. Does he recollect ſelling a copy of a pamphlet intitled, Peace and Union, by Mr. Frend, to Dr. Kipling's ſervant?

Anſwer. He does.

Q. From whom had he that pamphlet?

A. From Mr. Frend.

Q. Did he go to Mr. Frend's chambers for it?

A. No.

Q. Where then did Mr. Frend deliver it to the witneſs?

A. I received it from Mr. Frend in the witneſs's houſe.

Q. Did Mr. Frend bring it himſelf to the witneſs's houſe?

A. No.

Q. Who then brought it to his houſe?

A. It came to his houſe in a parcel directed to Mr. Frend.

Q. Does

Q. Does he know from whence that parcel came?

A. He does not.

Q. What did that parcel contain, beſides that one copy ſold to Dr. Kipling's ſervant?

A. It contained that pamphlet, and ſeveral other duplicates.

Q. How does he know that it contained ſeveral other duplicates of that pamphlet?

A. He ſaw them when the parcel was opened.

Q. Who opened that parcel?

A. Mr. Frend himſelf.

Q. How long had the parcel been in his houſe, before Mr. Frend came to open it?

A. He does not now recollect whether Mr. Frend came the ſame day on which he opened it, or not; but it was on the ſame day or the following day.

Q. Did Mr. Frend deliver that one copy aforeſaid, with ſome others, to be ſold for him?

A. He did.

Q. Did he give the witneſs any commiſſion about the remaining copies?

A. He does not recollect that he did.

Q. Did he give no directions to ſend any copies to Mr. Merrill or Mr. Lunn?

A. He does not recollect that he gave the witneſs any.

Q. Did witneſs hear Mr. Frend give any directions to the witneſs's ſervant?

A. Mr. Frend did.

Q. To inform the court what thoſe directions were?

A. Mr. Frend directed the witneſs's ſervant to take

one

one of the incloſed parcels to Mr. Merrill: another incloſed parcel was directed to be taken to Mr. Lunn.

Q. from the court. Were any of the parcels under cover?

A. They were tied up, and the titles together; the titles faced, ſo that no print was ſeen: the ends of the pamphlets were blank.

Q. How did he know that theſe pamphlets were copies of the pamphlet, intitled Peace and Union?

A. He does not know that they were pamphlets intitled Peace and Union.

Q. Does he know that the pamphlet, now produced by Dr. Kipling's ſervant, was the pamphlet ſold by him?

A. He does not know that that was the pamphlet.

Mr. FREND croſs-examined the witneſs.

Q. Whether he has not ſold for Mr. Frend a variety of books of various authors, addreſſed to the witneſs or Mr. Frend, in parcels from London?

A. He has.

CHARLES DICKENS, LL. D. was called by the plaintiff, and ſworn, and depoſed as follows:

Queſtion. Whether has he in his poſſeſſion at preſent that pamphlet, intitled Peace and Union, &c. by William Frend, which was ſhewn to him by a friend of his about a week ago, and containing an appendix in two parts.

Anſwer. He has.

Q. To produce it in court.

A. He is ready to produce it. (He did produce it.)

Q. Of

Q. Of whom had he that pamphlet?

A. "From my old friend and acquaintance Mr. Frend. I ſaw him at a bookſeller's ſhop at St. Ive's: he was going to ſend out ſome of them. (Interrupted by the court.)" Of Mr. Frend.

Q. Did he make a preſent of it?

A. Mr. Frend ſaid, that he deſigned to ſend him one, and took up that one which he has in his hands, "I ſaid, no one ſhall ſee this till it become publici juris."

Q. How does he know that that is the very book he took up?

A. "Hiſce oculis video;" and he knows it by his own hand-writing in it,

"Sunt bona, ſunt quædam mediocria, ſunt mala plura,"
which I tranſlate,

"Do you expect a perfect work to ſee?
"You aſk what never was, nor is, nor e'er ſhall be."

Q. Dr. Dickens was deſired by Mr. Frend to read what is written in the end of the pamphlet, in Dr. Dickens's own hand-writing. "The court was inclined to reject it; but on Dr. Kipling's deſire it was read. Trojani equi fabricator was ſaid to be Epeus. I don't know that, nobody knows."

A. He read, Siſte per fidem, at the bottom of the ſtairs,

Nolo per Jovem, ſaith good Mr. Eyres,
Nil dictum quod non dictum ſit prius.

ACTA CURIÆ.

At a Court, holden, &c. between the hours of twelve and ſix, on Saturday the eleventh of May, 1793, &c.

CERTAIN reſolutions reſpecting this cauſe, by which Dr. Kipling, Dr. Jowett, Mr. Manſel, Mr. Mainwaring, and Mr. Belward, were appointed managers to carry on, 'in their names,'* this proſecution, were read.

Dr. Kipling deſired that the two pamphlets, yeſterday produced in court, the one by Harvey Alger, the other by Dr. Dickens, might be examined by the court, that the court might be ſatisfied that the ſame were duplicates, excepting an appendix annexed to the latter.

John Bowtell, jun. Philip Life, John Bowtell, ſen. William Henry Lunn, Elizabeth Everſden, John Merrill, Thomas Wagſtaff, Thomas Watſon, A.M. Edward Kilvington, A. M. John Plampin, A. M. and Thomas Newton, A. M. were ſworn and examined, Mr. Frend having firſt proteſted againſt the evidence of Edward Kilvington, A. M. as having ſigned the reſolutions aforeſaid: and certain letters, or notes, marked A, B, and C, addreſſed to Mr. Watſon, fellow of Sidney college, were read, and alſo anſwers to the ſame, marked a, b, and c.

The court was adjourned to Monday next, at ten o'clock.

"The vice-chanceller holding a paper in his hand, addreſſed Dr. Kipling; You conſented that a copy of theſe reſolutions ſhould be given to Mr. Frend?

Dr. Kipling anſwered. I did conſent that Mr. Frend might have a ſight of them.

* 'In their names,' was left out in the copy delivered to me; but it was read in this manner afterwards in the court of delegates.

The papers were then delivered to Dr. Kipling, who after looking at them and a ſhort conſultation with the other four managers, ſaid, they contain nothing we are aſhamed of; yet I am unwilling to gratify an impertinent curioſity.

The papers were then delivered into court and publickly read."

CAMBRIDGE, QUEEN'S COLLEGE, MARCH 4th, 1793.

RESOLVED by the under-written perſons, members of the univerſity of Cambridge, that William Frend, M. A. and fellow of Jeſus college, be proſecuted in the vice-chancellor's court, for having publickly and notorioufly offended againſt a grace, paſſed by the ſenate of this univerſity in the year 1603; and that the following gentlemen be a committee to manage the ſaid proſecution, viz. Dr. Kipling, Dr. Jowett, the Margaret profeſſor of divinity, the public orator, and the reverend Mr. Belward, fellow of Caius college:

T. Kipling
J. Jowett
J. Mainwaring
W. L. Manſel
R. Belward
Geo. Whitmore
W. Mathew
E. Bradford
J. Olderſhaw
W. Walford
W. Wade
J. Plampin
H. Jowett
J. Smith
J. Coſtobadie
J. Wood
Tho. Salmon
H. Greene
G. King
T. Lloyd
R. Ramſden
A. Frampton
E. Kilvington
E. Outram
R. Tillard
W. Pugh
W. Walker
F. J. H. Wollaſton
Wm. Eaſton
W. Wilſon

CAM-

CAMBRIDGE, MARCH 11, 1793.

Agreed, that the following words in the reſolution made laſt Monday, viz. 'againſt a grace paſſed by the ſenate of this univerſity, in the year 1603,' be reſcinded, and that in lieu of them be ſubſtituted theſe words, viz. 'againſt the laws of the univerſity.'

T. Kipling	Geo. Whitmore	R. Ramſden
J. Jowett	Wm. Eaſton	A. Frampton
J. Mainwaring	Henry Jowett	E. Kilvington
W. L. Manſel	W. Mathew	W. Walker.
R. Belward	W. Walford	W. Pugh
	E. Bradford	E. Outram
	J. Olderſhaw	
	W. Wade	
	J. Coſtobadie	
	J. Smith	
	P. Douglas	
	J. Wood	
	Tho. Salmon	
	F. J. H. Wollaſton	
	G. King	
	G. Gordon	
	W. Wilſon	
	H. Greene	
	T. Lloyd	

"Mr. Frend requeſted that they might be left with him during the ſitting of the court, which Dr. Kipling objected to. Dr. Kipling then deſired the vice-chancellor to compare Dr. Dickens's pamphlet with Alger's. Mr. Frend obſerved; it would ſave trouble if the promoter would ſay for what end Dr. Dickens was produced at all. Dr. Kipling replied; it will ſave no trouble, therefore I ſhall go on in my own way."

"Mr. Frend. Dr. Dickens only ſpoke to a fact in Huntingdonſhire, with which this court has no concern."

JOHN BOWTELL, jun. ſworn, and depoſed as follows.

Queſtion. Do you recollect ſeeing Mr. Friend, a few weeks ago, open a parcel in Mr. Bowtell's houſe, containing ſome pamphlets?

A. Yes.

Q. Did Mr. Friend deliver any of thoſe books or pamphlets to you?

A. He left ſome there for me to take out.

Q. Did he himſelf give you any directions about them?

A. Yes.

Q. What were thoſe directions?

A. To take one parcel to Mr. Merrill's, and one to Mr. Lunn's.

Q. Did you ſee the title-page of any of thoſe pamphlets?

A. Of ſome that laid looſe.

Q. What was the title-page, as nearly as you can recollect?

A. "I do not know, but I think," Peace and Union.

Q. Do you recollect any perſon's name in the title-page?

A. Mr. Friend's.

Q. Were you directed to carry out any of thoſe pamphlets that were lying looſe?

A. Yes.

Q. Who gave you thoſe directions?

A. Mr. Friend.

Q. To

Q. To what gentleman did he direct you to carry them?

A. To Dr. Edwards.

Q. To any other perſons?

A. To Mr. Lambert, to Mr. Marſh.

Q. Were you to deliver any meſſage along with the pamphlets?

A. I do not remember that I was.

Q. To whom did you deliver that parcel which Mr. Frend ordered you to carry to Mr. Lunn's?

A. To Mr. Life.

Q. Who is Mr. Life?

A. Mr. Lunn's journeyman.

Q. Can you tell how many pamphlets were in that parcel?

A. They were tied up in fifties, and he took one parcel.

Q. To whom did you deliver that parcel which Mr. Frend directed you to carry to Mr. Merrill's?

A. To Mr. Merrill's maid.

Q. Do you know her name?

A. No.

Q. Can you recollect her perſon when you ſee her again?

A. No.

"Vice-chanceller. Should you know her?"

A. "No."

Q. From the court. Do you know what thoſe pamphlets were which you delivered to Mr. Lunn's journeyman, and Mr. Merrill's maid.

A. No.

PHILIP

PHILIP LIFE ſworn.

Q. Do you recollect ever receiving from John Bowtell, jun. a parcel containing fifty pamphlets, or thereabouts?

A. I do.

Q. Did you open that parcel yourſelf?

A. I cannot charge my memory whether Mr. Lunn or I opened it.

Q. Did you ſee the parcel opened?

A. I ſaw it when it was open.

Q. What were the contents of it?

A. It contained fifty copies of a pamphlet intitled, Peace and Union recommended to the aſſociated bodies of republicans and anti-republicans.

Q. Was there any perſons name upon the title page?

A. Yes. Mr. Friend's.

Q. What might be the interval of time, or nearly ſo, between your receiving that parcel and ſeeing it opened?

A. I ſaw it opened the ſame evening it was brought.

Q. Are you ſure that the parcel of pamphlets that you ſaw open was the very parcel that you received from John Bowtell?

A. I am ſure.

Q. Did John Bowtell, jun. deliver any meſſage to you along with that parcel?

A. He ſaid it came from Mr. Friend's.

Q. Did he ſay for what purpoſe?

A. I do not recollect that he did.

Q. Have

Q. Have any of thoſe pamphlets been ſold in Mr. Lunn's ſhop?

A. Yes.

Q. How many?

A. The whole fifty.

Q. On what authority did you undertake to ſell thoſe books?

A. I cannot ſay, it was Mr. Lunn's order they ſhould be put into the ſhop for ſale.

Q. Have any more copies of the ſame pamphlet been ſold in Mr. Lunn's ſhop?

A. Yes.

Q. How many more?

A. About ſeventy.

Q. Do you know where thoſe ſeventy copies came from.

A. I went for fifty of them to Mr. Bowtell's houſe, and for the other twenty to Mr. Friend's rooms.

Q. Did you receive the fifty copies yourſelf from Mr. Bowtell?

A. I did.

Q. And what did you do with them?

A. Brought them home to Mr. Lunn's ſhop.

Q. Are all thoſe fifty copies ſold?

A. They are.

Q. Were they all ſold before you went to Mr. Friend's chambers for more copies of the ſame book?

A. I believe they were, but cannot ſpeak with any certainty.

"Dr. Kipling obſerved to the court, the other twenty, you will remember, were proved to have been brought from Mr. Frend's rooms."

Q. Do you know whether any more copies of the ſame pamphlet were brought into Mr. Lunn's ſhop for ſale?

A. I never ſaw any after the twenty copies I received from Mr. Friend.

Q. Do you then believe that no more than thoſe hundred and twenty copies, which have been juſt mentioned, were ever expoſed to ſale in Mr. Lunn's ſhop?

A. I do.

Q. (from Mr. Friend.) At what time the ſale of theſe pamphlets began at Mr. Lunn's?

A. Somewhere about February the thirteenth laſt.

JOHN BOWTELL, ſen. ſworn.

Q. Did you ever deliver fifty copies of the pamphlet intitled Peace and Union, &c. to Philip Life, Mr. Lunn's foreman?

A. I do not recollect that I did.

Q. Do you recollect whether Philip Life ever came and aſked you for ſome copies of that work?

A. No I do not remember that.

Q. Do you recollect ever giving any parcel of books to Philip Life, Mr. Lunn's foreman?

A. I have no recollection of it.

Q. Did not Mr. Friend leave ſeveral copies of the pamphlet intitled Peace and Union, and ſo forth, in your houſe, to be diſtributed to others, who might aſk for the work?

A. He did.

Q. Did

Q. Did you make an entry in your account books of the number of copies which he left you for that purpoſe?

A. I believe I did.

Q. Have you kept an account, in the ſame account books, of the perſons names to whom you have delivered copies of that work, and of the number of copies that you have delivered to each perſon?

A. I have only the name of Mr. Frend.

"Dr. Kipling. He cannot underſtand the queſtion, which was therefore repeated."

A. I have no account of any perſon to whom I have ſold them.

Q. You told the court, yeſterday, that you ſaw Mr. Friend open a parcel which contained many pamphlets. You have alſo told the court that ſeveral of thoſe pamphlets were left in your own poſſeſſion. Have you kept no account of thoſe pamphlets?

A. No I have not.

Q. Are they all in your own poſſeſſion ſtill?

A. None of them.

Q. Tell the court to what perſons you recollect having delivered ſome of them.

A. I think I recollect ſending fifty copies to Mr. Friend, unfold.

Q. Tell the court the names of all the perſons to whom you have ſent parcels of thoſe pamphlets?

A. I ſent none. I ſaw them go. Mr. Frend ſent them.

Q. How many copies did you ſend to Mr. Lunn?

A. I ſent none.

Q. Do you mean to deny, that Philip Life ever had fifty copies, from you, of the pamphlet intitled Peace and Union, &c. by Mr. Friend.

A. No.

Q. Do you think that he never had that number of copies of the pamphlet ſo intitled, from your houſe?

A. I might deliver them, but I do not recollect it.

Q. You have ſaid, that you never ſent any of thoſe pamphlets yourſelf to Mr. Lunn's, but that you ſaw fifty of them go. By whom were they carried to Mr. Lunn's?

A. By my ſervant, John Bowtell, jun.

Q. Who directed him to carry them thither?

A. Mr. Frend.

Q. What meſſage did Mr. Frend ſend along with them?

A. I do not recollect any particular meſſage.

Q. Did he ſend no meſſage?

A. He ſaid, take them to Mr. Merrill, and Mr. Lunn, this is all I recollect.

WILLIAM HENRY LUNN ſworn.

Q. Your foreman has told the court, that he received a parcel, containing fifty pamphlets, from John Bowtell, jun. that he does not recollect whether he or yourſelf opened that parcel; do you recollect by whom it was opened?

" Mr. Friend aſked the court, whether ſuch prolegomena were allowable in queſtioning a witneſs? The commiſſary diſapproved of them."

A. I have no recollection of that circumſtance at all.

Q. Do

Q. Do you recollect that a parcel containing fifty pamphlets, intitled Peace and Union, and ſo forth, by William Friend, was left in the month of laſt February at your houſe?

A. I have a perfect recollection of their being left, but cannot ſpeak as to the time; but my ledger will prove it.

Q. Did you deliver them to your foreman for ſale in the ſhop, or give him any directions for that purpoſe?

A. I do not recollect.

Q. By what authority then do you ſuppoſe they were ſold in your ſhop?

A. As coming from Mr. Bowtell by Mr. Friend's order.

Q. Had you any more copies of the ſame pamphlet from Mr. Bowtell?

A. I ſent for more when the firſt were ſold.

Q. How many were brought?

A. Fifty.

Q. Had you ſold the whole hundred copies which you ſay you received from Mr. Bowtell, before the third of April?

A. I cannot ſay.

Q. Had you ſold them all when you ſent for ſome more copies from Mr. Friend?

A. I think they were all ſold. I will not ſay poſitively.

Q. What more copies of the ſame work have you ever received for ſale?

A. Twenty copies.

Q. From whom did you receive thoſe twenty copies?

A. I received them by my agent, in conſequence of a meſſage I ſent to Mr. Friend.

Q. Had you ever any copies of the ſame pamphlet for ſale, in your ſhop, beſides the hundred copies you had from Mr. Bowtell, and the twenty copies you had by your journeyman "from Mr. Frend's chambers? Theſe latter words were withdrawn by direction of the commiſſary."

A. No.

Q. Do you believe that thoſe hundred and twenty copies are the only ones that were ever brought into your ſhop for ſale, and that you have ſold no others?

A. I do.

ELIZABETH EVERSDEN ſworn.

Q. "Do you remember ſeeing that boy? (pointing to Bowtell, jun. who had been detained at the bar.)"

Q. Do you remember ever ſeeing John Bowtell, jun.

A. I do not.

Q. Do you recollect receiving a parcel of books or pamphlets from a perſon of about that ſize?

A. Yes.

Q. To whom did you deliver that parcel?

A. To my maſter, Mr. Merrill.

Q. Did you ſee that parcel opened?

A. No.

Q. Did the perſon, of whom you received that parcel, deliver any meſſage with it?

A. He told me they were pamphlets to be ſold for Mr. Frend.

Q. Did

Q. Did he tell you from whence they came?

A. No.

Q. Do you recollect about what time you received that parcel?

A. No.

Q. Can you tell how long ago?

A. She cannot ſay.

JOHN BOWTELL, jun. again examined.

Q. Do you recollect delivering a parcel of pamphlets which you received from Mr. Frend, to Elizabeth Everſden, Mr. Merrill's ſervant?

A. Yes.

Q. Do you now recollect her perſon?

A. Cannot tell.

"Mr. Frend obſerved, if Dr. Kipling has any queſtion in future to determine perſonal identity, I muſt deſire that he be not permitted to point out the perſon to the witneſſes, but that they be left to diſcover it; as I believe is uſual in all other courts."

JOHN MERRILL ſworn.

Q. Do you recollect receiving from your maid ſervant a parcel containing fifty pamphlets, intitled Peace and Union, and ſo forth, by W. Frend, with a meſſage purporting that they were to be ſold for Mr. Frend?

A. Yes.

"Q. Were thoſe pamphlets when you received them, put up ſo that the title pages could not be ſeen?

To this queſtion Mr. Frend made objections, which the commiſſary allowed."

Q. How

Q. How were thoſe pamphlets put up?

A. I cannot recollect they were put up in any particular order.

Q. Were the title pages viſible.

A. I do not remember they were viſible, they had titles.

Q. Did you open the parcel yourſelf?

A. Yes.

Q. What were the titles of thoſe pamphlets?

A. Peace and Union, by William Friend, &c.

Q. Have you ſold any of thoſe pamphlets?

A. Yes.

Q. Do you recollect whether, at the time you received them, each pamphlet had an appendix to it?

A. Yes they had.

Q. Did you ſell any copies with the appendix to it?

A. Yes.

Q. Have you ſince that ſold any without the appendix?

A. Yes.

Q. By whoſe authority was the appendix cancelled?

"Objected to by Mr. Frend; but ordered as aſked for no purpoſe but to prove the pamphlet, with the appendix, written by Mr. Frend."

A. By Mr. Friend's.

Q. Did Mr. Friend authoriſe you, in perſon, to cancel the appendix?

A. Yes.

Q. Did

Q. Did he direct you, in perſon, to ſell the pamphlet without an appendix?

A. I do not recollect that he did.

Q. Did he give you no directions whatever, in perſon, about the ſale of thoſe pamphlets?

A. I do not remember that he did.

Q. "To whom do you intend to pay the money you have received, or may receive, for the ſale of this book?

Mr. Frend objected to this queſtion; the commiſſary thought it not improper; however it was changed."

Q. To whom have you given credit in your books for the money you have received for the copies of the pamphlets that are ſold?

A. To Mr. Friend.

Q. Did you ſend a copy of the ſaid pamphlet to the Maſter of Arts coffee-houſe?

A. I did.

Q. Do you recollect by whom you ſent it?

A. I do not.

Q. from the court. At what time did you receive this parcel from your ſervant?

A. February the thirteenth laſt, as appears by entry in my books.

THOMAS WAGSTAFF ſworn.

A book was delivered to him.

Q. What is the title of the book in your hand?

A. Peace and Union recommended to the aſſociated bodies, &c.

Q. Did

Q. Did you ever ſee that book before that is now in your hands?

A. Yes.

Q. Where did you ſee it?

A. At the Maſter of Arts Coffee-room.

Q. Who keeps that coffee-room?

A. I do.

Q. From whence did that book come?

A. From Mr. Merrill's.

Q. Look at the ſecond leaf; whoſe hand writing is that?

A. It is mine.

Q. What is written on the leaf?

A. Maſter of Arts Coffee-room.

Q. (from Mr. Frend.) Who has a right to take books out of the Maſter of Arts Coffee-room?

A. Any member belonging to the ſociety.

Q. Is Dr. Kipling a member of that ſociety.

A. No.

Q. Do you know then how the book came into Dr. Kipling's poſſeſſion?

A. No.

Q. Do you know then who took it out of the coffee-room?

A. Mr. Frampton of St. John's.

Q. How long has it been taken out of the coffee-room?

A. On the ſixth of May.

Q. Are

Q. Are there any limitations reſpecting the time of taking books out of the coffee-room?

A. Seven days.

Q. "I mean" how long is a book to be in the coffee-room before it may be taken out?

A. Two months.

Q. When did you receive this book?

A. On the fifteenth of February.

"Dr. Kipling obſerved to the court; this book, you obſerve, has an appendix."

Q. (from the court.) How did you know the book came from Mr. Merrill?

A. "I ſuppoſe ſo, as all books are ſent in from Mr. Merrill. This was anſwered again."

A. Becauſe it was numbered when it came in, which is the common caſe with books that come from Mr. Merrill.

"(Mr. Frend.) Do you not receive into the coffee-room ſome as preſents?

A. I do.

This evidence occaſioned ſome delay, and Mr. Merrill was called again."

Mr. MERRILL called again.

Q. from the court. Do you remember numbering that book (ſhewing him a book from the Maſter of Arts coffee-houſe)?

A. No, "'tis not my number," but I believe it to be the numbering of my young man.

THOMAS WATSON, A. M. ſworn.

Q. Were you not curate of Fenſtanton in February or March laſt.

A. I was.

Q. Did you not during that interval make ſome inquiries reſpecting the price of ſpinning wool?

A. I did.

"Vice-chanceller. What! what! ſpinning wool! what has that to do with this buſineſs. Dr. Kipling went up to the vice-chanceller and ſaid ſomething in a low voice to him: who ſaid, ay, ay, go on."

Q. Did you not during that interval make ſome inquiries reſpecting the price of ſpinning wool?

A. I did.

Q. What led you to that inquiry?

A. The peruſal of part of a book which I had read in the Maſter of Arts Coffee-room.

Q. What book? what was the title of it?

A. I do not recollect the preciſe title, but I have reaſon to believe that the beginning of the title was Peace and Union.

Q. Is any perſons name mentioned in the title-page?

A. I believe W. Friend, A. M. fellow of Jeſus college.

Q. Did you find what is ſtated in that book reſpecting the price of ſpinning to be agreeable to the information you received from the inhabitants of Fenſtanton?

A. I had reaſon to believe that the information I received at Fenſtanton on that ſubject was different from the information I received from that book on that ſubject.

Q. Did you mention that ſeeming miſrepreſentation to any of your acquaintances at that time?

A. I did, whenever inquiry was made to me on that ſubject.

"Vice-

"Vice-chanceller. What is all this to prove?

Dr. Kipling. That Mr. Frend is the author."

Q. Have you reaſon to think that Mr. Frend ever heard that you thought what is ſaid in the above-mentioned pamphlet about ſpinning, is not true?

A. I have reaſon to conceive ſo.

Q. Mention that reaſon to the court.

A. I did receive notes or letters, as I preſumed coming from Mr. Friend, in one of which I was deſired not in future to aſſert that the ſubject on which I had been queſtioned in various companies, was a miſrepreſentation.

Q. Is that note in your poſſeſſion?

A. It is.

Q. Have you it in court?

A. Yes.

Q. Pleaſe to produce it,

It was produced.

Dr. Kipling. I deſire that the firſt note may be read.

"Mr. Watſon. I cannot ſwear that the note was written by Mr. Frend."

EDWARD KILVINGTON, A. M. ſworn.

"Mr. Frend objected to the oath being given to Mr. Kilvington, as one of the twenty-ſeven. The court anſwered; this objection was over-ruled yeſterday in Mr. Lloyd's caſe."

Q. (putting a note into his hands). Whoſe hand writing is that?

A. It is Mr. Frend's.

Q. Have you frequently ſeen Mr. Frend write before?

A. Yes, frequently.

Q. (from

Q. (from Mr. Frend). Do you know it to be Mr. Frend's hand-writing?

A. I do.

Q. How came you to know it to be Mr. Frend's hand-writing?

A. By having very frequently ſeen him write, and from having letters of his now in my poſſeſſion.

Q. Did you write any letters to Mr. Frend ever?

A. I believe I have.

Q. Where did you ſee Mr. Frend write?

A. In his own room when giving lectures, for three years or thereabout.

Q. How long ſince have you ſeen Mr. Frend write?

A. About ſix or ſeven years ſince, I ſaw him write, certainly not more.

Q. How then can you ſay that this is Mr. Frend's hand-writing that bears ſo late a date?

A. I have reaſons, but on Mr. Frend's account I am unwilling to give them.

Q. Mr. Frend begs the witneſs may be deſired to give them?

"A. Mr. Frend's ſtudied attentions---

Here a ſhort delay and conſultation in the court, after which the commiſſary aſked Mr. Frend, do you wiſh him to produce additional reaſons?

Mr. Frend. Undoubtedly.

Mr. Kilvington reſumed;"

A. Mr. Frend's ſtudied attentions ſhewn to me, as I believe they were ſhewn to all thoſe whom he was deſirous of proſelyting to his own opinions, were ſuch, as to have impreſſed very deeply upon my mind the recol-

lection

lection not only of his hand-writing, but of a thouſand other circumſtances much more minute: added to this, I have occaſionally ſeen his hand writing ſince the time which I formerly alluded to.

Q. How long ſince?

A. Very lately.

Q. How lately, how far back?

A. Within a month.

Q. On what occaſion?

A. In the order book at the Maſter of Arts Coffee-houſe.

"The vice-chancellor and commiſſary here obſerved, that this added no new ſtrength."

"Mr. Kilvington. I was unwilling to ſpeak more ſtrongly." And further believes that he has ſeen Mr. Frend write within theſe two or three years, "in his own room."

Q. Did he read the writings which he has ſeen Mr. Frend write within theſe two or three years?

A. I have ſeen the direction of letters which I have ſeen Mr. Frend write.

Q. At what time preciſely?

A. I cannot ſay: but I believe within three years.

Q. Is it within theſe two years?

A. I cannot ſay preciſely: I believe not.

"Mr. Frend. He ſeems to ſay that he is well acquainted with hand-writing. I wiſh he may be aſked whether he knows this hand-writing? (throwing down ſome papers)."

"The vice-chancellor thought they might be read; the commiſſary thought not."

JOHN

JOHN PLAMPIN, A. M. ſworn.

" Mr. Frend objecting to Mr. Plampin's evidence, ſaid, he was one of the twenty-ſeven, and alſo one of thoſe who had already ſat in judgement on this matter in my own college, and condemned me on this very queſtion without hearing any thing in my defence."

" The court obſerved, the objection had been over-ruled."

" Mr. Frend ſaid, here is additional ground."

" A note was put into his hand."

Q. Whoſe hand-writing do you believe that note to be?

A. I believe it to be Mr. Frend's.

Q. (from the court.) Have you ſeen Mr. Frend write frequently and lately?

A. I have within ſix weeks.

Q. (from Mr. Frend.) Whether any of your pupils have an opportunity of knowing your hand-writing at lectures?

A. Certainly not, becauſe it is not my duty to write in their preſence.

" Does Mr. Plampin give any lectures in college?"

" Over-ruled."

" Dr. Kipling deſired that a copy of the note might be given to him and the managers, which was agreed to, and Mr. Frend now deſired that a copy of their reſolutions might be delivered to him in exchange. This alſo was allowed."

THOMAS

THOMAS NEWTON, A.M. ſworn.

"A note was put into his hand."

Q. Whoſe hand-writing do you think that is?

A. I believe it to be Mr. Frend's, but I cannot ſay poſitively.

Q. (from the court.) Have you ſeen Mr. Frend write frequently, and how lately?

A. I believe I have ſeen him write within a year or two, but not frequently.

"The note was read."

To the Rev. Mr. Watſon, fellow of Sidney coll.

Mr. Frend having been informed that Mr. Watſon has ſtudiouſly endeavoured in various companies to make it appear that his account of the fall in the price of ſpinning was a miſrepreſentation, takes this opportunity of acquainting him, that Mr. Frend gained his knowledge of this circumſtance from three ſources; from the poor employed in ſpinning; from the perſons employed by the wool-dealers to deliver out wool to the poor; and from the printed papers ſent round by the wool-dealers. He aſſerts as a fact from theſe informations, that the poor perſon, who gained a ſhilling the week before the printed paper Mr. F. alludes to, was ſent round, did the week after for the ſame quantity of work gain only nine pence. Mr. Audley, a wool-dealer in this town, is willing to corroborate this account, and will, Mr. Frend doubts not, give Mr. Watſon any further information on this ſubject, which may not only make Mr. Watſon's ideas clearer, but prevent him from miſ-ſtating in future a matter of fact.

Jeſ. coll. Mar. 4, 1793.

Mr. WATSON's evidence resumed.

Q. Has that note ever been out of your poſſeſſion?

A. It has.

Q. How do you know that the very ſame note you lent was returned to you?

A. By my own hand writing, which is on one ſide of it.

Q. When was that written?

A. Before it ever went out of my poſſeſſion.

Q. Did you return any anſwer to that note?

A. I did.

Q. Be pleaſed to produce that anſwer before the court?

A. The witneſs delivered in the anſwer, which he ſaid he could not ſwear was a literal or verbatim copy of the anſwer he ſent, but that it contained the meaning and ſubſtance of it, and was written ſoon after the other.

To Mr. Frend, Jeſ. Coll.

Mr. Watſon has received a note from Mr. Frend, in anſwer to which he declares that whenever the oppreſſion of the poor of Fenſtanton has been the ſubject of converſation in conſequence of Mr. Frend's appendix, that he aſſerted, that he wiſhed to believe that Mr. Frend thro' ignorance had miſrepreſented the fact, his reaſon for this aſſertion was founded upon information he received at Fenſtanton. Mr. Watſon is ſtill of the ſame opinion. As to being ſtudiouſly earneſt in contradicting or ſupporting Mr. F's publication Mr. W. denies the fact.

Thurſday noon.

Q. Did you receive any reply to the aforeſaid anſwer?

A. I did.

Q. Be

Q. Be pleaſed to produce that reply before the court, marked B?

The reply was produced and read.

Mr. KILVINGTON recalled.

A note marked B was ſhewn to Mr. Kilvington.

Q. Do you believe that the note marked B is the hand-writing of Mr. Frend?

A. I do.

Mr. PLAMPIN recalled.

The note marked B was put into his hand.

Q. Do you believe that note marked B is the hand-writing of Mr. Frend?

A. I do.

Mr. NEWTON recalled.

The note marked B was put into his hand.

Q. Do you believe that the note marked B is the hand-writing of Mr. Frend?

A. I believe it is.

To the Rev. Mr. Watſon, Fellow of Sidney Coll.

Mr. Frend requeſts the favour of Mr. Watſon to omit in future his remark on Mr. F's account of the fall of ſpinning, namely, that he wiſhed to believe that Mr. Frend thro' ignorance had miſrepreſented the fact, as Mr. Frend takes upon himſelf to aſſure Mr. Watſon that the fact is not at all miſrepreſented. Mr. Frend has informed Mr. Watſon from what ſources he derived his information, and takes the liberty of obſerving that Mr. Watſon is not probably aware that the printed bills al-

luded to are formed at meetings for a large diſtrict, and that thoſe, which Mr. Frend ſaw, did not relate only to the ſpinners of Stanton, but extended over Huntingdonſhire, parts of Northamptonſhire and Bedfordſhire.

In conſequence of Mr. Watſon's note Mr. Frend called this evening on Mr. Audley who has given him a printed paper juſt made for Cambridgeſhire, parts of Hertfordſhire, Bedfordſhire, and Huntingdonſhire, and ſhewn him letters from Yorkſhire and other parts informing him of the progreſs in the lowering of the price of ſpinning. At a meeting this week in Suffolk, ſpinning was lowered again 2d. per pound, from 9d. to 7d.

Now if, in contradiction to Mr. Audley and a variety of dealers whom Mr. Audley is willing to name to Mr. Watſon, beſides giving him every other information on this ſubject, Mr. Watſon ſtill perſiſts in declaring that the price of ſpinning, which was one week at a ſhilling, and reduced according to Mr. Frend's account to 9d. the week after, was not in this manner reduced, Mr. F. can only requeſt that he would point out to him from what ſources he has derived an information, which the principal dealer in wool of this place declares not to be true, which Mr. Frend knows alſo not to be true from the actual inſpection of the printed papers, which regulate theſe proceedings.

Mr. Frend did not in his former note refer to his publication at large, but ſimply to the fact of the fall of the value of ſpinning; he did not ſay that Mr. Watſon was ſtudiouſly earneſt in contradicting or ſupporting Mr. F's. publication, but ſolely that he has ſtudiouſly endeavoured, in various companies, to make the account of the fall in ſpinning appear a miſrepreſentation.

Jeſ. Coll. Mar. 14, 1793.

Mr. Watson's evidence reſumed.

Q. Produce your anſwer to the note marked B?

The

The anſwer was produced and read, and declared by the witneſs to be written under the ſame circumſtances as the other.

To Mr. Frend, Jeſ. Coll.

Sir,

I was ſenſible from the inquiry that I made that the price of ſpinning was at the time mentioned in your pamphlet lower than the common current price, and that the value of a ſhilling's worth of labour was only paid by 9d.

You may probably be better ſkilled in the myſteries of woollen manufacturies than I can pretend to be; my trifling knowledge of this trade does not attempt to account for the reaſon of paying what is term'd a ſhilling's worth of labour with 9d. or 10d. but I believe it to be a notorious fact, that in proportion to the fluctuating value of the manufactur'd commodity, the price of ſpinning a certain quantity of wool, has varied in different degrees downwards from one ſhilling, which may be conſidered as the maximum; and that this did not commence at the period you mention, for previous to that the price of woollen goods had not been at the higheſt, and therefore a full ſhilling was not paid for the labour of ſpinning that certain quantity. This information I received from ſome of the moſt reſpectable inhabitants of each of my pariſhes, and to the beſt of my recollection it is the ſubſtance of what I have ſaid, when I have conceived your aſſertion (however well meant) haſtily adopted, that before the commencement of the preſent war one ſhilling was the current price, and that it immediately fell 3d. I again repeat that I did not think myſelf intereſted about any part of your pamphlet as to be ſtudiouſly earneſt in having it diſcuſſed in various companies.

I am, Sir, your humble ſervant,

Sid. Mar. 15, 1793. Jos. Watson.

Q. Did you receive an anſwer to the note you have now read?

A. I did.

Mr. KILVINGTON recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Frend?

A. I do.

Mr. Plampin recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Frend?

A. I believe it is.

Mr. NEWTON recalled.

Q. Do you believe that the note marked C is the hand-writing of Mr. Frend?

A. I believe it is.

Mr. WATSON's evidence reſumed.

Q. Were the two laſt notes produced by you, marked with the marks B and C, marked before you ever parted with them?

A. They were.

Note C was read.

To the Rev. Mr. Watſon, Fellow of Sidney Coll.

Mr. Frend did not write to Mr. Watſon to enter into any controverſy on the miſteyries of woollen manufacturies, which, like the pretended myſteries of religion, are only ſuch to thoſe who do not give themſelves the trouble of gaining knowledge from the proper ſources. It is of a miſrepreſentation of a matter of fact to the injury of Mr. Frend's character that he complains, and, however

light

light the ſubject may appear in Mr. Watſon's eyes, as long as truth is violated, it becomes Mr. Watſon to acquire juſt information, and, having done that, either to convict Mr. Frend of a falſehood or to retract his former aſſertions. Mr. Frend declares that, at the time mentioned in the appendix to his pamphlet, ſpinning was at ninepence, the week before it was at par or a ſhilling. Mr. Watſon denies this, and is referred by Mr. Frend to Mr. Audley, the principal wool-dealer in this place, or to any wool-dealer in Huntingdonſhire. It appears ſtrange that Mr. Watſon ſhould delay to call on Mr. Audley, from whom he will gain more information on this ſubject than from the moſt reſpectable inhabitants of his pariſh, who are not immediately concerned in letting out ſpinning to the poor.

Jeſ. Coll. Mar. 15, 1793.

Q. Did you anſwer the third note marked C?

A. I did.

Q. Did you ſend that anſwer of your's to Mr. Frend?

A. I did.

Mr. Watſon's anſwer to note C was read.

To Mr. Frend, Jeſ. Coll.

Sir,

You aſſert that I deny what you poſitively affirm I do not. The information I received upon the ſubject ſeemed to me inconſiſtent with your publication. I repeat to you that I am not converſant in the knowledge of or practices obſerved in woollen manufacturies. I cannot from myſelf preſume to contradict what you from your profeſſed extenſive inveſtigation of the ſubject poſitively affirm. I will endeavour to recollect (if the matter can be deemed worthy of recollection) that the idea, which I had formed from the information of my pariſhioners has been unequivocally contradicted by you,

you. I have before ſaid, that I wiſh'd to believe that thro' ignorance you had miſrepreſented a matter of fact. You cannot think, that I have injured your character by ſuppoſing you liable to error, but I affirm that it will be a violation of truth if you maintain, that I have ſtudiouſly endeavoured in various companies to accuſe you of wilful miſrepreſentation. I beg leave to decline any future correſpondence with you upon the ſubject of the fall of the price of ſpinning at Fenſtanton. I would wiſh to appear to poſſeſs the ſentiments of that perſon or thoſe perſons, who humanely and ſtudiouſly endeavoured to deliver your pamphlet from the incumbrances of its appendices, by tearing them from the copies, that at a certain period remained with the bookſellers. I would not wiſh that by any endeavours of mine, even the remembrance of them ſhould be attached to the pamphlet from which they were ſtudiouſly ſeparated. The intention of that ſeparation was doubtleſs, that they might be conſigned to oblivion, that peaceful receptacle, where enthuſiaſtic rhapſodies and chimerical theories, having loſt their novel eccentricity, repoſe undiſturbed, being ſecured by their own intrinſic inſignificance*.

I am, Sir, your humble ſervant,

Jos. WATSON.

Q. By whom did you ſend that anſwer to Mr. Frend?

A. By my bed-maker John Smith.

Q. Whether John Smith brought any anſwer?

A. He did.

Q. Have you any particular reaſon for thinking that the notes A, B and C, came from Mr. Frend of Jeſus college?

A. I have.

Q. Pleaſe

* The letters of Mr. Watſon and Mr. Frend are given here, the former from the originals, the latter from copies in Mr. Frend's poſſeſſion.

Q. Pleaſe to give that reaſon to the court?

A. The firſt time I met Mr. Frend in public after the receipt of the third note, he uſed to me the words; Our correſpondence has ceaſed.

Q. Had you any other correſpondence with Mr. Frend, in writing, ſince Chriſtmas.

A. Not to the beſt of my recollection.

Q. Is there any other reaſon you would produce to the court?——A. No.

Q. (from Mr. Frend). Whether you have not reaſon to believe that the information you received from Fenſtanton was not true?

A. At the time I received the information I thought it true, and was ſatisfied with what Mr. Frend had ſhewn me.

Q. What did Mr. Frend ſhew you?

A. Some papers which Mr. Frend ſhewed me ſince the correſpondence.

Q. What did thoſe papers relate to?

A. I do not exactly know.

Q. Were they certificates?

A. I believe one might have the form of a certificate, do not poſitively know what they might be.

Q. Were they all written papers?

A. I believe not.

Q. Have you any recollection of what the printed papers related to?

A. I remember ſeeing one printed paper particularly.

Q. To relate what that printed paper contained as to your recollection?

A. I believe it contained a ſcale of the prices of wool ſpinning, but I cannot ſwear that it did.

ACTA CURIÆ.

At a Court, holden, &c. between the hours of ten and two, on Monday the thirteenth day of May, &c.

FRANCIS HODSON was ſworn and examined. Alſo Edward Kilvington, A. M. John Plampin, A. M. Thomas Newton, A. M. John Merrill, John Bowtell, ſen. John Bowtell, jun. and Harvey Alger, were examined. And John Smith, and William Mathew, Fellow of Jeſus College, and LL. B. were ſworn and examined.

Dr. Kipling read the third article, and page 29 of the pamphlet, entitled, 'Peace and Union,' beginning from the words 'The liturgy,' &c. to words, 'ſuch compoſitions,' and referred the ſaid article to the judgment of the court.

Dr. Kipling then read the fourth article, and from pages 36, 37, and 38, beginning from the words, 'the ſame paſſions,' and ending at the words, 'epiſcopal conventions,' in the ſaid pamphlet, and remarked upon the ſame.

Dr. Kipling then read the fifth article; and read from the 39th page of the ſaid pamphlet, beginning from the words, 'the chriſtian world,' to the words, 'ſpirit of Chriſtianity;' and adduced the caſe of Charke, fellow of Peterhouſe, 1572.

Dr. Kipling then read the ſixth article, and read from the ſaid pamphlet, from pages 39 to 40, beginning at the words, 'the laity, like' to the words, 'with his cloaths,'' and ſubmitted the article to the judgment of the court.

Dr.

Dr. Kipling then read the ſeventh article.

Dr. Kipling read the eight article, and read part of the ſtatute, ‘ de concionibus,’ from the words, ‘ prohibemus,’ &c. to the end, and the grace 1603, page 365.

Dr. Kipling then read the ninth article.

And the court was adjourned to Friday the 17th inſt. at ten o’clock in the morning.

FRANCIS HODSON ſworn.

The Cambridge Chronicle and Journal was put into his hand, dated February the ninth, one thouſand ſeven hundred and ninety-three.

Q. Are you the printer of this newſpaper?

A. Yes.

Q. Read the advertiſement in the third page, third column, the ninth from the top?

A. Read the ſame to the court; This day, &c.

Q. By what authority did you enter that advertiſement?

A. A gentleman of the univerſity brought it to me in writing, on the ſixth of February, and deſired me to inſert it; and did pay me for the inſertion.

Q. Was it Mr. Frend himſelf?

A. No.

Q. Do you know who the gentleman was?

A. It was the Reverend Herbert Marſh, fellow of St. John’s college.

“ Dr. Kipling obſerved to the court: Mr. Marſh is ſo much indiſpoſed, as not to be able to attend till ſent for into court.”

Q. Have you the writing which Mr. Marſh left with you?

A. Yes.

Q. Produce that note to the court? the ſame was read.

"Dr. Kipling. I ſhall not prove the hand-writing of this note, till another note is produced.

"The note was directed to the Reverend Herbert Marſh.

"Mr. Hodſon obſerved, the direction had nothing to do with the advertiſement. The advertiſement then was read. Mr. Hodſon obſerved, that it was preſerved as his authority for inſerting it. Mr. Marſh, who had been ſent for, now appeared, and addreſſed the court in theſe words: *

" Mr. vice-chanceller,

" Is it abſolutely neceſſary that my evidence ſhould be taken? You'll conſider, Sir, that Mr. Frend is a near relation—a man with whom I have been educated from my childhood, and, of courſe, a confidential friend. I think it hard,—you yourſelf, Sir, with every aſſeſſor on the bench, would think it hard,—nay, even the proſecuters themſelves, if it was their own caſe, would think it hard, extremely hard, to be dragged forward in this publick manner, to act againſt a man with whom they were connected by the bonds of friendſhip, and united by the ties of blood. I requeſt, ſir, the opinion of the court. The vice-chanceller, with the commiſſary and heads, then retired, and in about a minute the vice-chanceller returned, and made the following anſwer: Mr. Marſh, the court has taken your caſe into conſideration, and is of

* Before this, Mr. Marſh had frequently expoſtulated with the promoter on the cruelty of forcing him to attend, and, failing of ſucceſs, had addreſſed him in writing.

opinion,

opinion, that you ought not to be examined, unleſs Dr. Kipling particularly inſiſts upon it. To which Dr. Kipling replied, that he only wiſhed to aſk Mr. Marſh a few queſtions, for form's ſake, relative to the letter. The commiſſary then addreſſed Dr. Kipling to the following purport:—Dr. Kipling, you have heard Mr. Marſh's reaſons: the court is ſatisfied with them; and, I think, therefore, you will not inſiſt on his being examined. Dr. Kipling, with ſome reluctance, then gave up the point: and Mr. Marſh retired."

Q. The Cambridge Chronicle and Journal, dated 16th February, was then put into the witneſs's hands.—Are you the printer of that newſpaper?

A. Yes.

Q. Read the advertiſement, the firſt of the third column, third page?

A. The ſame was read: This day, &c.

Q. By whoſe order did you inſert that advertiſement?

A. By Mr. Frend's own order perſonally.

Q. Mention to the court what paſſed between you and Mr. Frend relative to that order?

A. I cannot recollect the exact words: but Mr. Frend deſired me to repeat his advertiſement in the next paper, and to ſay, 'This day is publiſhed.'

" Dr. Kipling. Did he not make uſe of theſe words, My pamphlet. This queſtion was diſallowed by the court as unfair."

Q. Did he make uſe of any other words?

A. Not to his recollection.

Q. Did you receive a note from Mr. Frend ſoon after that converſation?

A. I received a note in the name of Mr. Frend, ſaying,

that he had omitted to desire me to add the price of one shilling.

Q. Produce that note before the court?

A. The same was produced and read.

Q. "Whose hand-writing do you think it is? Agreed by many voices in the court, that this was not a proper question."

Q. Have you ever seen Mr. Frend write?

A. Yes, "often; but not this note. Without that I cannot swear to this."

Q. Do you think those notes were written by Mr. Frend?

A. I am of opinion they were; but I would not be supposed to speak positively. "Vice-chanceller asks, What are your reasons for thinking it Mr. Frend's?" The reasons are, that the respect I have for Mr. Frend as a gentleman of literature, and a member of this university, would not have permitted me to insert an advertisement to which his name was annexed, unless I supposed I had his own authority for doing it.

EDWARD KILVINGTON, A.M. sworn.

"Dr. Kipling. I refer to the former testimony given by Mr. Kilvington, and shall not put the previous question again, Whether he has seen Mr. Frend write."

Q. (Notes marked A. and B. were put into his hand.) Whose hand-writing do you believe that to be in the note marked A.?

A. Mr. Frend's.

Q. And in the note marked B.?

A. Mr. Frend's also. "Mr. Frend seemed to object to my former evidence, and asked, Whether I had seen his writing within two years? I was then unprepared."

Q. "By

Q. "By Mr. Frend." Does Mr. Kilvington recollect that he has ſeen Mr. Frend write within theſe two years?

A. I am now, upon recollection, prepared to ſay that I have.

Q. Have you read any of Mr. Frend's hand-writing within theſe two laſt years, that you have ſeen him write within theſe two laſt years?

A. I have.

JOHN PLAMPIN, A. M. ſworn.

Q. Look on the note marked A. Whoſe hand-writing do you believe that to be?

A. I believe it to be Mr. Frend's; though I am not ſo certain of it as of the others.

Q. Look at the note marked B. Whoſe hand-writing do you believe it to be?

A. The ſame anſwer as to the former queſtion.

THOMAS NEWTON, A. M. ſworn.

Q. Look at the note marked A. Whoſe hand-writing do you believe that to be?

A. I cannot ſpeak poſitively, but I believe it to be Mr. Frend's.

Q. Look at the note marked B. Whoſe hand-writing do you believe that to be?

A. I return the ſame anſwer as before.

JOHN MERRILL, ſworn.

Q. Have you, "or any one for you, objected to by the court," ever received into your houſe, any one copy of the pamphlet, entitled 'Peace and Union,' and ſo forth, by William Frend, beſides thoſe fifty copies which you

you mentioned in your former evidence to have been brought to your houſe from Mr. Bowtell's, on or about the fifteenth of laſt February?

" Mr. Frend interpoſed, and begged that Dr. Kipling might be confined to ſimple queſtions, without any prolegomena, till he acquires the talent of writing prolegomena better."

A. I never received any more than that parcel which I received on the thirteenth of laſt February.

Q. " Did you ever ſell a book, called A ſecond addreſs to the inhabitants of Cambridge, publiſhed 1789. Dr. Kipling produced a book.

Court aſks, Do you think it material to prove the publication of Peace and Union?

Dr. Kipling. No. I want to explain ſome paſſages in the preſent publication by it.

Mr. Frend roſe and aſked: Are my ſuppoſed opinions in 1793, to be explained by a book, ſuppoſed alſo to have been written by me in 1789?

The court rejected the book as inadmiſſible in evidence."

JOHN BOWTELL, ſen. ſworn.

Q. Have you ever had in your houſe, either as preſents or for ſale, any copies of the pamphlet, entitled, Peace and Union, &c. by William Frend, that were not contained in the parcel that you formerly told the court was opened by Mr. Frend at your houſe, and in your preſence?

A. Not one that I have ſeen.

Q. Do you not think you would have ſeen them had there been ſuch?

A. Yes, I think I certainly ſhould, had I been in the way.

Q. Did

Q. Did you ever hear of any ſuch coming into your houſe, that were not contained in that parcel?

A. Yes.

Q. Do you know from whence they came?

A. No.

Q. Do you know who brought them into your houſe?

A. No.

Q. Who told you about them?

A. My nephew, John Bowtell.

Q. Have you ſold any of thoſe copies?

A. No.

Q. Are they ſtill in your poſſeſſion?

A. No.

Q. To whom have you delivered them, or cauſed to be delivered?

A. I neither delivered them to any body, nor cauſed them to be delivered.

JOHN BOWTELL, jun. ſworn.

Q. Have any copies of the pamphlet, entitled, Peace and Union, &c. by William Frend, been brought into your maſter's houſe, beſides all thoſe copies of the ſame pamphlet which were taken out of a parcel opened by Mr. Frend, in your maſter's houſe and preſence?

A. I brought ſome in myſelf.

Q. Do you recollect how many you brought in?

A. No.

Q. From whom did you receive thoſe copies?

A. I fetched them from the inn where the carrier ſets up at.

Q. What

Q. What carrier?

A. The St. Ives.

Q. To whom were they directed?

A. They were directed to our houſe, and I think for Mr. Frend.

Q. Who ordered you to go to the carrier's for them?

A. Mr. Frend.

Q. What did you do with thoſe copies?

A. Mr. Frend deſired me to unpack them.

Q. Where were you when Mr. Frend deſired you to unpack them?

A. In our own houſe.

Q. Do you know what became of them afterwards?

A. They were ſent to London.

Q. Did you take them to the London carrier yourſelf?

A. Yes.

Q. (from the court.) How do you know they were copies of that pamphlet?

A. I ſaw ſome of them untied, and ſaw the title pages.

Q. When?

A. About the ſixteenth or ſeventeenth of February, on a Thurſday night, and they were ſent to London the ſame night.

Q. "(from Mr. Frend)" Do you remember ſeeing Mr. Frend before at your houſe, packing up or unpacking parcels?

A. I have ſeen Mr. Frend one or two days before in our houſe unpacking a parcel.

Q. Within theſe three or four years laſt, have you

ſeen

ſeen him frequently unpacking parcels, or cauſing them to be packed?

A. I do not remember that I have.

JOHN BOWTELL, ſen. again examined.

Q. Have any copies of the pamphlet, intitled, Peace and Union, &c. by William Frend, been ſold in your houſe, which were not taken out of the parcel which you ſaw Mr. Frend open, to your knowledge?

A. No others have been ſold but what came out of that firſt parcel that I know of.

Q. Have any copies of ſaid pamphlet been ſent from your houſe to Mr. Merrill's, or Mr. Lunn's for ſale, which were not taken out of the ſame parcel?

A. That I cannot tell, I do not know of any.

" Mr. Frend here aſked, Whether it was uſual and regular to call and recall evidence in this manner?

The commiſſary ſaid, he wiſhed that it could be avoided."

Q. Have you ever ſold any copies of ſaid pamphlet, with the appendix annexed?

" Mr. Frend objected to this queſtion, but the objection was over-ruled."

A. I do not recollect that I have ſold one with the appendix annexed.

Q. Was that appendix torn from any copies of the pamphlet at your houſe?

A. Yes—it was cancelled.

Q. Who cancelled the appendix?

A. I did.

Q. By whoſe order?

A. Mr. Frend's.

Q. To whom have you given credit in your books for the money you have received for copies of the pamphlet that are ſold?

A. Mr. Frend.

Q. (from Mr. Frend.) Do you recollect ſeveral parcels of books, of various authors, in the courſe of four years, or five years, being packed or unpacked by my orders at your houſe?

A. I do.

HARVEY ALGER ſworn.

Queſtion. Of the two copies of the pamphlet intitled 'Peace and Union, &c. by William Frend,' which you purchaſed by my order at Mr. Lunn's or Mr. Bowtell's, did you deliver both into my hands on the firſt court day, or one only?

A. Only one.

Q. Which of them was it, that which you purchaſed at Mr. Lunn's, or that which you purchaſed at Mr. Bowtell's?

A. That which I purchaſed at Mr. Lunn's.

Q. How do you know it was that pamphlet in particular?

A. By having marked it with an L.

Q. Did you ſee me take the very ſame pamphlet from the table in the court on that day?

A. Yes.

Q. How do you know it to be the very ſame pamphlet?

A. By the marks which were on it.

Q. At

Q. At what time did I take it from the table?

A. At the time the court broke up.

Q. To whom did I deliver it?

A. To me.

Q. When and where?

A. At the table, at the time the court broke up.

" Dr. Kipling now obſerved, that the evidence having been given in court at different times, and in a detached way, he muſt beg for time to collect the ſubſtance and to arrange his obſervations upon it: but recollecting that John Smith had not been examined, he was called in and ſworn."

JOHN SMITH ſworn.

Q. Do you know Mr. Frend of Jeſus college by ſight?

A. Yes.

Q. Do you recollect carrying a note to him from Mr. Watſon of Sidney, within theſe two or three months?

A. Yes.

Q. Did you deliver it into Mr. Frend's own hand?

A. Yes.

Q. What did Mr. Frend ſay to you on that occaſion?

A. It required no anſwer.

Q. Is this the only note you ever took from Mr. Watſon to Mr. Frend?

A. Yes.

" Dr. Kipling. I am now ready to proceed on article the third, and will repeat the paſſage. Here Dr. Kipling read. Mr. Frend objected that the paſſages as quoted by Dr. Kipling, were not in the book. Dr. Kipling ſaid; to be ſure it mentioned purity of arrangement, but he

left that out becauſe he did not underſtand what it meant. We accuſe him of defaming the liturgy. In proof of this aſſertion the promoter was going to read a paſſage out of the pamphlet publiſhed by Mr. Frend in 1789, but the defendant objected to this, and the vice-chanceller, after a conſiderable demur with the heads, ſaid, we think that unleſs Mr. Frend allows that to be his book, and that he is of the ſame opinion now which he was then, it cannot be read. Dr. Kipling. I will then leave that article to the judgement of the court.

" Dr. Kipling proceeded to the 4th article, and read p. 36, 37, 38, obſerving that the church of England muſt be included, as appears evidently from the context. For in page 36, the authour diſtinguiſhes the whole body of chriſtians into the members of the church of England, the diſſenters, then the few diſperſed over England, called, unitarians. Page 37, he ſpeaks of the great body as deviating from the worſhip of the one God. By this, therefore, he muſt mean the church of England and diſſenters together. Certainly, therefore, the church of England is included. This great body he aſſerts to have aſſociated the worſhip of created beings, p. 37, with that of the god and father of Jeſus Chriſt. He charges us, therefore, directly with idolatry. He cannot be ſpeaking of the church of Rome, for he ſays, p. 38, ' Let churchmen and diſſenters examine how far they have deviated, &c.'

" Vice-chanceller. I ſhould be glad, Dr. Kipling, to hear how you make out that in the great body of chriſtians the church of England is included. Dr. Kipling. I could have produced better evidence if I had been allowed. The 5th Article being read, and paſſages quoted from p. 39, Mr. Frend looked up and down the page, but declared he could not find it. Dr. Kipling. It is there. Mr. Frend. I cannot find it. Dr. Kipling. Mr. Vice-

Vice-chanceller, it is exactly the ſame, 'tis all there except an omiſſion. Here a loud laugh on all ſides.

"Dr. Kipling, after reading the 5th Article, ſaid, I believe, Mr. Vice-chanceller, it is not unuſual for the proſecuter to point out precedents for the direction of the court. I will produce one. In the year 1590, Mr. Charke was charged with aſſerting in a concio ad clerum, firſt that all biſhops, archbiſhops, and the pope, were introduced by Satan, into the church. 2dly, with affirming, that there ought to be no ranks of ſuperiority in the church whatever. He was brought before the vice-chanceller, and confeſſed the charge. He was called upon to recant; he refuſed, and was excluded from his college, and baniſhed the univerſity.

" Mr. Frend. Was this done by the vice-chanceller and the heads, or in the vice-chanceller's court?

"Dr. Kipling. It was done ſomewhere, I don't know where.

"Dr. Kipling read the 6th Article, and ſaid he had nothing to add to that article, he ſhould leave it all to the court.

" The ſeventh Article having been read,"

WILLIAM MATHEW, LL. B. Fellow of Jeſus college, was called and ſworn.

Q. Was Mr. Frend a fellow of Jeſus college in the month of February laſt, and does he continue to be a fellow of the ſame at this time?

A. He was fellow in the month of February laſt, and is fellow at this time.

Q. On what ground do you affirm that?

A. On two grounds: firſt, becauſe the admiſſion to the fellowſhip in Jeſus college appears upon the regiſter of

the

the college, and becauſe I pay to him ſuch money as is due to him as fellow.

Mr. PLAMPIN called in again.

Q. Do you know that Mr. Frend was fellow of Jeſus college during the whole month of February laſt, and that he continues ſtill to be fellow?

A. Yes, I do.

"Commiſſary. It appears that a Mr. Frend was fellow of Jeſus, but not that the defendant is that Mr. Frend.

Dr. Kipling. I believe it is the practice of the court to put the defendant to admit or deny it.

Court. You are to prove he is a maſter of arts.

Dr. Kipling. The regiſter books prove that, but they are not here. But here is a young man who was examined for his bachelor's degree by Mr. Frend, and as none but maſters can examine for that degree, it follows that Mr. Frend was a maſter of arts.

Vice-chanceller. That is no proof. People may take liberties which they have no authority for.

8th Article. The decree of 1603 was read, then the law de concionibus from Prohibemus, by the bedell. Mr. Frend deſired that the bedell might read any other laws, if any more were to be made uſe of. Dr. Kipling. I do affirm that he has offended theſe. Mr. Frend. Does the promoter mean to refer to any other? Vice-chanceller. If he does, he muſt produce them in time for you to conſider them.

Dr. Kipling. I ſhall mention no more.

Mr. Frend. Does he refer to any more? if he does, let him declare them like an honeſt man.

Vice-

Vice-chanceller. Do you (to the promoter) mean to mention any more?

Dr. Kipling. At preſent I have no intention.

Mr. Frend. Will he be allowed, after this, to mention any more?

Vice-chanceller. If he does, time ſhall be given to Mr. Frend.

The 9th Article was then read, praying that right and juſtice be done.

Here the evidence was cloſed, excepting only the proof of Mr. Frend being a maſter of arts which was poſtponed to the next court-day.

The Vice-chanceller then aſked, at what time Mr. Frend would be ready, and in what manner he meant to conduct his defence.

Mr. Frend ſaid, that he intended to divide his defence into three parts, which might take up about two hours each; that he would compriſe it in leſs if poſſible; that his health might not enable him to go through more than one part in a day, but he truſted that, if neceſſary, ſuch indulgence would be allowed to him; he engaged it ſhould not exceed that time.

Dr. Kipling then begged, that he might be allowed a little time to collect, arrange, and digeſt the evidence on the publication which had neceſſarily been ſo disjointed; and to add ſome obſervations upon it.

This was granted, and the court adjourned to Friday the 17th, 10 o'clock in the morning."

ACTA CURIÆ.

At a Court holden, &c. between the hours of ten and twelve, on Friday the ſeventeenth day of May, &c.

THE book of degrees, and a ſupplicat for the admiſſion of William Frend, of Jeſus College, to the degree of A. M. were produced;

And Dr. Kipling was heard upon the evidence heretofore produced in this cauſe to the court;

And the court was adjourned to Friday next, the 24th inſtant.

HEADS OF THE PROMOTER'S SPEECH.

" Dr. Kipling thought it incumbent on him to expreſs his acknowledgement to the vice-chanceller and the court, for the patient attention which they had ſhewn to the cauſe, and their indulgence in allowing him time to arrange the evidence, which had been various and detached, and to digeſt it in ſuch a manner, that its combined force might be more clearly and ſatisfactorily perceived. He declared, that he ſhould avoid every thing perſonal and offenſive, and confine himſelf ſolely to the merits of the caſe, as all his aim was to procure right judgement and equal deciſion, and he truſted that the vice-chanceller and his aſſeſſors would think it reaſonable to expect the ſame conduct from the defendant.

" After this exordium he proceeded to ſum up the evidence, and to direct it to the proof of three points, that

that Mr. Frend was the diſtributer, the publiſher, and the author of the pamphlet, entitled Peace and Union.

" The proof of the diſperſion of Peace and Union was inferred from Alger's copy bought of Lunn, marked L, and traced to Mr. Frend. 2d. From Mr. Lloyd's copy, which was in the ſame manner traced to Mr. Frend. 3d. From Alger's ſecond copy, bought of Bowtell, and alſo the copy from the maſter of arts coffee-houſe, had from Merrill, which were alſo traced up to Mr. Frend. 4th. From there not being one copy ſold in this place but by Mr. Frend's direction.

II. " The proof of the publication was inferred from,

" 1. The parcel brought to Bowtell, opened by Mr. Frend, and accounted for to him. 2d. The directions given by Mr. Frend to young Bowtell to carry them out to Merrill's. 3. The receipt of them by Merrill's maid. 4. The teſtimony of Merrill himſelf. 5. The directions to young Bowtell to take them to Lunn. 6. The receipt of them by Life, Lunn's foreman.

" The promoter added to this article, he could enumerate more proofs, but they were unneceſſary.

III. " The proof of authorſhip was inferred from,

1. " The name on the title page.

2. " The cancelling of the appendix by Mr. Frend, at all the bookſellers.

3. " Mr. Frend ſpeaking of it to Life as his pamphlet.

4. " Hodſon's orders for advertiſement.

5. " Dr. Dickens's copy, and Mr. Watſon's correſponding evidence. If after this, which was amply enlarged upon, any perſon be inclined to diſpute, that

Mr. Frend is the author of the pamphlet in queſtion, Dr. Kipling maintained, that he had at leaſt taken upon himſelf the reſponſibility of it. Dr. Kipling then cloſed the account of the evidence, reſerving however the right of anſwering Mr. Frend, if he ſhould advance any thing to invalidate theſe proofs. *

" The vice-chanceller then obſerving, that Dr. Kipling ſpoke from notes, ſaid; Do you put the court in poſſeſſion of thoſe notes?——Dr. Kipling. I ſhould have no objection: but they cannot be of any uſe: they are merely to aſſiſt my recollection: you could not read them.

" Vice-chanceller to Mr. Frend. Are you ready to enter now upon your defence?

" Mr. Frend. It muſt be clear that I cannot, as I have not yet ſeen the evidence that was taken down in the court, and I wiſh to know in whoſe hands it has been?

" Commiſſary. It is no part of the acta curiæ; it is only for private aſſiſtance of the vice-chanceller and his aſſeſſors; it is no record.

" Mr. Frend. Has any body had it?

" Regiſtrary. Dr. Kipling.

* The heads of this ſpeech will give the reader a complete idea of the ſubſtance of it, for nothing ſcarcely was added under each article, except paſſages taken from the depoſitions, and to do the promoter juſtice, it muſt be confeſſed, that this part was done in a very maſterly manner. The names of the bookſellers, and their ſervants, flowed with great eaſe from his lips, and their evidence was recited with a fluency and accuracy which would have done Dr. Kipling credit in the Old Bailey, or any other court of juſtice. As the reader however is in poſſeſſion of the depoſitions themſelves, it is ſuperfluous to repeat them in this place.

" Mr.

"Mr. Frend. By whoſe authority? I concluded he muſt have had ſome ſuch aſſiſtance, from the ſingular fluency and accuracy with which he ſummed up the evidence which has been given. Who knows what liberties may have been taken with it? I ſhall certainly expect the ſame indulgence.

"Vice-chanceller. There was no reaſon why Dr. Kipling ſhould not ſee it, nor can there be any why Mr. Frend ſhould not.

"The vice-chanceller then propoſed Monday or Tueſday for Mr. Frend to enter on his defence, but it being obſerved, by two heads of colleges, that thoſe days were ſermon days, and Dr. Fiſher being obliged to be in London on the Wedneſday, Friday was propoſed and accepted. The vice-chanceller obſerved, that it was the wiſh of the court, that Mr. Frend might be able to finiſh all in one day. Mr. Frend replied: If it were poſſible he certainly would; but if he found it impoſſible, he truſted that he ſhould meet with the ſame indulgence which had been granted to Dr. Kipling."

ACTA CURIÆ.

At a Court, holden, &c. between the hours of ten and three, on Friday the twenty-fourth of May, &c.

MR. FREND was heard in his defence, having firſt reſerved to himſelf the power of objecting hereafter to any part of the evidence, or of the proceedings heretofore produced and had before the court in this cauſe.

Mr. Frend having read certain objections to the evidence, particularly that the minutes taken by the regiſtrary in this cauſe had been taken out of court, and delivered to the promoter, and the regiſtrary being aſked by Mr. Vice-chancellor, if the minutes had undergone any alteration while in the hands of the promoter, the regiſtrary declared, that he had looked over the minutes, ſince they were returned by the promoter, and that they had not undergone any alteration while in the promoter's hands.

Mr. Frend interpoſed a proteſt in writing, againſt the validity of the ſaid minutes.

The grace book, containing the graces 1603, was produced: and it was admitted by the court, that the grace, ' placet vobis ut quicunque doctrinam, &c.' was not to be found in the ſaid book.

Dr. Kipling was heard, in remarking on the defence of Mr. Frend, and

The court was adjourned to Tueſday next at eleven o'clock.

Mr.

Mr. FREND's SPEECH.

Mr. Vice-chanceller,

I Think myſelf happy in having arrived at laſt to that period, in which it is permitted to me to ſpeak in my own defence, and to refute thoſe calumnies, under which, for ſo conſiderable a time, I have laboured. The patient attention, which you have beſtowed on this cauſe during the fatigue of ſo many days, encourages me to hope, that you will liſten to me with equal candour, and that I ſhall find no difficulty in proving to your ſatisfaction as well as that of the whole court, that the charges brought againſt me are, as I aſſerted on a former day, falſe, wicked, and malicious.

It is indeed a very extraordinary cauſe which now awaits your deciſion; a cauſe not to be paralleled in the annals of this univerſity or even of the kingdom at large. For in what preceding period is it recorded, that a number of maſters of arts and doctours combined together to attack the rights of a member of the ſenate? When was it thought neceſſary, that in defiance of the juſt power of the heads of this place, a cabal ſhould erect itſelf into an inquiſitorial office, and take under its cognizance the writings or ſpeeches of an academick? When did the publication of a pamphlet give riſe to a perſecution like this, which, though in its conſequences it is not ſo much to be dreaded as thoſe of former ages, from the malignity and baſe arts of the conducters, and the total violation of law and juſtice with which it has been carried on, exceeds certainly every thing that has been recorded on the page of hiſtory.

About the middle of February was publiſhed a pamphlet, entitled 'Peace and Union.' It came forth at a time when the public mind was filled with the ſtrongeſt apprehenſions of dangerous plots againſt the peace of this

this kingdom, and inſurrections were ſuppoſed ready to break out in every quarter. As the higheſt authority had given the alarm, each man was in fear for his own ſafety, but no one could poſſibly announce from whence the attack ſhould begin. Troops were diſperſed incognito over the country, and a look or a jeſt was ſufficient to rank the friends of mirth and good humour among the enemies of government. The univerſity was not free from the contagion of the times, and there were among us men well known for their intriguing diſpoſition, who endeavoured by every art in their power to countenance a deception, which ought not to have gained ground but amongſt the loweſt of the people.

Complaints made to the Vice-chanceller.

On the firſt appearance of the pamphlet in queſtion, it was held forth as a moſt dangerous attack on every thing ſacred to engliſhmen, both in their religion and politicks. The flame ran from one to the other, and long before the contents could be digeſted, it was declared abſolutely neceſſary for the ſafety of the univerſity and of the ſtate itſelf, that the authour ſhould be puniſhed in the moſt exemplary manner. Individuals firſt complained to the vice-chanceller, then parties of two, three or more at a time, and at laſt a meeting was called of the diſaffected, who, now well known by the name of the twenty-ſeven, entered into reſolutions, appointing managers for the proſecution, and directing that proper ſteps might be taken to deprive the authour of his degrees, and to baniſh him from the univerſity.

Steps taken by the promoter.

This important buſineſs could not however be completed with the rapidity with which it was planned. The promoter found that ſeveral previous ſteps were neceſſary, and above three months elapſed, before he was prepared to diſplay his eloquence in open court. In this time every aſſiſtance was given to him

him which the ableſt barriſters in town could afford; the publick oratour imparted to him his eloquence; from the Lady Margaret's profeſſour he was ſupplied with elegance of diction; and the profeſſour of civil law by communicating to him the whole of his knowledge in that profeſſion, felt himſelf enervated at his uſual lectures. But all this aſſiſtance would have been in vain if other means had not been employed: while the committee was compiling and arranging within, the familiars were engaged without doors, in ſearching out for information, in learning where the ſuppoſed authour ſpent his time, what was his converſation, what letters he had received, and to whom he had written. It was enough, that a familiar heard a perſon ſay, that he heard another perſon ſay, that Mr. Frend had been talking to another perſon about his book. In an inſtant the promoter flew to the rooms of the laſt mentioned perſon, ſifted out the converſation, and adapted it to his purpoſe. One gentleman * was ſummoned to appear in this place, and was actually under the neceſſity of leaving a canvas in London, merely becauſe it was his misfortune to have been chatting over a tea-table with ſome ladies, when Mr. Frend came in and joined the converſation. No ſtone was left unturned: bookſellers, bookſeller's boys, printers, friends, relations, and enemies, all were ſet to work to bring ſo great a criminal to juſtice.

Mr. Frend's conduct and aſſiſtance.

Againſt theſe mighty efforts what had I to oppoſe? Nothing, Sir, but ſilence and my own innocence: truſting in the mean while to the natural effect of time and the good ſenſe of the univer-

* The Rev. Mr. Davis, junr. fellow of Trinity college, was ſummoned in this manner, and, to his very great inconvenience, was preſent on the firſt day in the ſenate-houſe. The promoter, baffled in his ſchemes on that day, and univerſally reprobated for his conduct in this inſtance, was obliged to give up his intentions of bringing Mr. Davis down from town a ſecond time.

ſity

ſity, and not doubting that, when the cauſe was heard, the folly and malignity of the conducters would appear in the moſt ſtriking colours. Not that I would have it ſuppoſed, that I came here without aſſiſtance. The univerſity has ſeen me accompanied by three of its members, who would do honour to any cauſe. They are men of tried learning, abilities, and integrity. Men who ran to me in the hour of diſtreſs, and on whoſe kindneſs and ſupport I ſhall to the laſt moment of my life, reflect with gratitude. Such men the univerſity knows to be my friends.

. . . . . quales neque candidiores
Terra tulit, nec queis me ſit devinctior alter.

His principles miſrepreſented.

Without the aſſiſtance of theſe friends I muſt have ſunk under the weight of prejudice with which the twenty-ſeven endeavoured to bear me down. Sir, I was pointed at as unfit to breathe this air; my religious and political principles were totally miſrepreſented; and ſuch were the inſidious arts uſed, that nothing but this publick appearance could ever have given me an opportunity of vindicating my conduct and character.

His declaration of belief in God.

Sir, I have been repreſented as an heretick, deiſt, infidel, atheiſt. Shall that man be called an atheiſt, who firmly believes in the exiſtence of one God, the parent, the protecter, and governer of the univerſe? Shall he be deemed an atheiſt, who declares, and has always declared his conviction of the being of the firſt cauſe in the words of the church of England: 'there is but one living and true god, everlaſting, without body, parts, or paſſions, of infinite power, wiſdom and goodneſs, the maker and preſerver of all things viſible and inviſible?' Is this the language of an atheiſt? Is a perſon, Sir, to be reprobated, who maintains theſe ſentiments?

But,

in Chriſt. But, Sir, I may be conſidered if not an atheiſt, yet as an infidel. Shall he, Sir, be eſteemed an infidel, who, for the ſecond article of his creed, grounds his hope of ſalvation ſolely on Jeſus Chriſt? Who looks upon his ſaviour as a perſon * ſent from heaven to be the means of the greateſt happineſs to mankind? Is he an infidel who declares his ſaviour to be the great mediatour between god and man, that his ſaviour gave himſelf up as a ranſom for all, and through whom alone is eternal life, the free gift of god, beſtowed upon a ſinful world. However we may differ on other parts of our ſaviour's character, we certainly unite in theſe principles, which are the eſſential points of a chriſtian's faith.

The third great point of his faith. In the third article of my belief, this whole audience, if we except the twenty-ſeven, unite with me. The belief of the two former articles, unleſs ſanctioned by a firm conviction of the latter point, and the neceſſity of acting under that conviction, appear to me of little conſequence. We may boaſt of our knowledge of and acquaintance with god, we may confound every gainſayer on the terms of our ſalvation, yet, if we neglect the principle of univerſal benevolence, our faith is vain, our religion is an empty parade of uſeleſs and inſignificant ſounds. That every chriſtian is bound to entertain ſentiments of univerſal benevolence, to love his fellow creatures of every ſect, colour or deſcription, is the third grand point of my faith. If any one, Sir, ſhould aſk me, to what ſect I belong? my anſwer is, my ſect is not confined to age, colour, or country. I am a firm believer in the truths revealed by God, but I uſurp no authority over another man's conſcience. Our lord and ſaviour Jeſus Chriſt is the head of my ſect,

* I am not ſure that I made uſe of the words 'ſent from heaven, or coming down from heaven,' but in either caſe they are to be conſidered as ſcriptural expreſſions, and conſiſtent with my opinion, that Chriſt was not in exiſtence eighteen hundred years ago.

he has laid down the rules of its faith and diſcipline. No one can encroach on his authority. His diſciples are to be found in all nations and countries, of every age, language and colour. They may meet in places appropriated for publick worſhip, or they preſent themſelves in private only before their god and father, the god and father of their ſaviour: but, wherever they are, they cannot perſecute for opinion, they cannot treat their neighbour injurioufly for any religious perſuaſion, they are connected together ſolely by the ties of univerſal love.

His political principles miſrepreſented by the twenty-ſeven.

Since my religious opinions have been ſo much miſrepreſented, it is not ſurpriſing that equal attempts have been made to hold me up, on account of my political principles, as an enemy to my country. Sir, I have been ranked among that viſionary herd to which it has lately been the cuſtom to affix the name of republicans and levellers. Is it poſſible, Sir, to conceive, that a perſon educated as I have been, ſhould entertain levelling principles? Is it likely that one who is accuſtomed to ſpend his life in ſtudy, and who, if ſuch principles prevailed, would have no poſſible means of obtaining a ſubſiſtence, is it likely, Sir, that he ſhould rank himſelf among levellers? The ſuppoſition is abſurd and ridiculous. There is not, I am convinced, one man in this aſſembly, nay, I will go ſtill farther, I do not believe that there is one man in this iſland, who ever dreamed of ſuch a principle. My opinion on this ſubject is the ſame with that of the biſhop of Llandaff, the principal of the man, who ſtands forward here as promoter in this nefarious cauſe. The biſhop has explained what ſome men call the levelling principle, or the principle of equality, to be that which every engliſhman takes a pride in maintaining, an equality of rights. That the rich ſhall not oppreſs the poor, nor the poor riotouſly

His real opinion of equality;

attack

attack the rich, that they ſhall be all equal in our courts of judicature, theſe are the true principles of equality. Or, I may explain myſelf ſtill farther by what takes place among ourſelves. We all come from our reſpective ſchools with different qualifications indeed, but in the eyes of the univerſity we are conſidered as equals. We are employed in various exerciſes, we have opportunities equally given to us all of diſtinguiſhing ourſelves, and when the inequality takes place, it is, or ought to be, from merit alone, the reward of the induſtrious uſe of our talents and our time.

of republicaniſm. Sir, the idea of an engliſhman entertaining the levelling principle, is abſurd, and is countenanced only by thoſe aſſociations, which endeavour to ſet us at variance with each other: and the term republican is employed for the ſame odious purpoſe. I have read much, Sir, on the ſubject of government, and by ſpending the greater part of three years in different tours on the continent, have had frequent opportunities of comparing with our own the various forms which prevail abroad, and I maintain that, excepting the ſmall democratical cantons of Switzerland, we have the greateſt claim to the title of republicans of any nation in Europe. If to be an advocate for the juſt rights of the people, if to conceive that liberty depends on the people declaring their ſentiments by repreſentatives in parliament, if to contend ſtrenuouſly for the independance of the houſe of commons on every perſon except the people, if to wiſh for a better repreſentation of the people, if theſe, Sir, are the ſentiments which will entitle men excluſively to the name of republicans, I acknowledge, that I am a republican. I exult in the privilege of my birth-right, and being an engliſhman, I rejoice that I alſo am a republican. And is there, Sir, a man in this aſſembly, is there an engliſhman, who does not maintain the ſame ſentiments? By

aſſerting our privileges, which ſet us far beyond the other nations, it does not follow by any means, that we would uſurp the prerogatives of the firſt magiſtrate, or encroach on the rights of the lords of parliament.

He is accuſed of rejoicing on the french conſtitution;

But, Sir, I am accuſed of a ſtill greater crime, I rejoiced at the ſucceſs of the french revolution. Yes, Sir, I did rejoice at the ſucceſs of the french revolution, and is there an engliſhman, who did not exult on this occaſion? At what period did I rejoice? was it not at the time when every good man rejoiced with me, when tyranny received a fatal blow, when deſpotiſm was overthrown by the united efforts of all orders of men in an extenſive empire? Was it not, Sir, at the time when that horrid dungeon was deſtroyed, in which had been tormented ſo many wretched victims of caprice and effeminate cruelty? Was it a crime, Sir, to rejoice, when the whole nation was of one mind, and this univerſity thought it a duty to impreſs the ſentiment on our young men, by giving them as a proper ſubject for their talents, the taking of the baſtile? It was glorious in the univerſity to unite with the general voice, and in the moſt publick manner to expreſs its indignation at tyrants and tyranny. I did, Sir, rejoice at the ſucceſs of the french revolution: but does it follow, that I was pleaſed with the ſcenes which ſucceeded, that I now look with joy and not with horrour on the dreadful outrages to which that country has been expoſed? The maſſacres and bloodſhed, diſgracing ſo noble a cauſe, have pained every lover of freedom; and, viewing the conflicts of the moſt horrid paſſions of the human mind, we have been left in a wretched ſtate of ſuſpence, and not having ſufficient grounds for uniting fully in our wiſhes for the ſucceſs of any party, we have conceived, that ſilence on french affairs, is moſt adviſeable.

If

of corresponding with the national assembly.

If to exult at the approach of freedom to a great and powerful nation was a crime, with what eagerness was the news circulated, that to make up the measure of my iniquities, I corresponded with the national convention! In laying this to my charge, they did me the honour of uniting me with four gentlemen of the most respectable character in this university, and as I am convinced that they would do nothing unworthy of the character of englishmen and academicks, the accusation, though intended to bring on me as much publick obloquy as possible, was rendered of less effect. As to myself, Sir, I here declare that neither directly nor indirectly did I ever correspond with the national convention, and I make no scruple of saying, that with respect to the gentlemen, with whom I was supposed to be associated in this transaction, I do not believe that any one of them was ever engaged in such a correspondance. Not, Sir, that I think there was any disgrace in corresponding with the national convention, but so obscure an individual as myself could lay no claim to the notice of that assembly. If I could have suggested any thing to promote the welfare of that assembly and the nation, which it represented, I should certainly have taken pleasure in doing it. They were our friends, there was no war declared between the two nations, they deserved our friendship, for they had broken the bands of slavery, and aspired to the honours of freedom.

Division of the discourse.

Having thus endeavoured by an explicit declaration of my sentiments to remove the calumnies which have been so industriously circulated respecting my religious and political principles, I come now to the more immediate object of my defence. I am accused of publishing a certain book, and by that publication of impugning religion as established by publick authority, and by such impugning, of violating the laws and statutes of the university. My discourse is

naturally

naturally divided into three heads. The ſecond is branched out into four articles. In one, I am charged with defaming the liturgy; in the ſecond, with calling the worſhip of the church of England idolatrous; in the third, with aſſerting that all eccleſiaſtical courts, ranks and titles, are repugnant to the ſpirit of chriſtianity; and in the fourth, with profaning and reviling the moſt ſacred offices of the church. Under the third head are mentioned two laws which I am ſuppoſed to have violated, the one a ſtatute de concionibus, the other a grace paſſed in the year 1603. Of all theſe I ſhall treat in their order, and for that purpoſe I requeſt that the ſecond article in the charges delivered to me may now be read by the officer of the court.

Here the ſecond article was read.

'2d. Alſo, We article and object to you the aforeſaid William Frend, That in the preſent year of our lord one thouſand ſeven hundred and ninety-three, you did publiſh, and cauſe to be diſperſed within this univerſity, a ſcandalous book or pamphlet, of which you are the author, intitled, Peace and Union recommended to the aſſociated bodies of Republicans and Anti-Republicans: by William Frend, M. A. fellow of Jeſus college, Cambridge. Printed for the Author, by P. C. Croft, St. Ives, 1793; which ſaid book or pamphlet is annexed to theſe preſents, and prayed to be admitted as if inſerted herein: and we article and object as above.'

Promoter's idea of perſonalities.

Sir, I am accuſed in this article not only of publiſhing a book, but of publiſhing a ſcandalous book: and here I cannot help admiring with what modeſty and addreſs the promoter in ſumming up the evidence againſt me requeſted that, as on his part all perſonalities ſhould be avoided, the ſame might be required on the part of the defendant. Well might he

be

be anxious to preclude me from all perſonalities in my reply. Satisfied with the abuſe which he and his adherents had before ſo liberally beſtowed, he might well be content to refrain from further perſonality, provided I might be withheld from expreſſing my juſt ſenſibility and reſentment. Doubtleſs he had a right to make this requeſt, as there is no perſonality in declaring a member of the ſenate the authour of a ſcandalous book! It is not at all perſonal to aſſert that Mr. Frend is unfit to breathe the air of this place! It is by no means perſonal to endeavour to deprive him of his degrees, and to expell him from the univerſity! Had I indeed, Sir, taken notice of a late publication of the learned promoter, had I aſſerted that the work, which he has given to the publick under the ſanction of the univerſity, is a diſgrace to a man of letters, that after all the labour beſtowed on it it abounded with ſo many and ſuch groſs blunders, as inſtead of a fac ſimile it was more properly ſpeaking a fac contrarium, that his prolegomena were filled with quaint alluſions and inaccuracies of expreſſion, at which a boy in the loweſt forms would bluſh; had I aſſerted ſuch things of the learned doctour, I ſhould have been called a dealer in perſonalities; but, when he accuſes me of writing a ſcandalous book, then, Sir, it ceaſes to be perſonality!

Let him not then eſteem me perſonal. I will not charge him with reading ſcandalous books, I will not accuſe him of vitiating his taſte by the peruſal of thoſe vile and profane authours of antiquity, which to our ſhame many of us ſtill keep in our ſtudies. This would be ſcandalous indeed. The learned doctour is better engaged than in commenting on a Cicero or a Demoſthenes: with theſe profane authours he has long ceaſed to have any communication: his ſtile is formed on much better models, and we cannot but admire the ſtreams of eloquence which he has derived from the enchanting remains of a Sanctus Pachomius, Theodorus Beza, and Sanctus Bernardinus.

Though

The charge falſe. Though, Sir, I diſdain every ſpecies of perſonality againſt this promoter, I muſt be allowed to ſay that his charge is falſe. The book entitled Peace and Union is not a ſcandalous book, it is not deemed a ſcandalous book by ſome of the moſt reſpectable members of the houſes of lords and commons, it is not eſteemed a ſcandalous book by ſeveral very diſtinguiſhed characters in the literary world, and in the judgement of many perſons among us eminent for their learning and abilities, this work ſo far from being deemed ſcandalous, is thought to contain a variety of topicks of the utmoſt importance to the ſtate, and deſerving the attention of every lover of his country. With all theſe I moſt cordially unite in wiſhing, that inſtead of blackening and defaming the character of the writer, the promoter and his twenty-ſeven had the candour and ability to anſwer the publication.

But whether the work is ſcandalous or not, let us conſider, what proofs are brought by the promoter that I am the authour of it. After ſo many days employed by him in endeavouring to prove this point, it would be a very bad compliment to paſs over without ſome notice, the labour in which he has ſo ſtrenuouſly exerted himſelf. On this account it will be neceſſary to make ſome previous remarks on the proofs of authorſhip in general, from which we ſhall eaſily perceive with what ſhallow proofs the inquiſitorial ſpirit is contented, when the ruin of an individual is the only point to which its zeal and malice are directed.

Marks of authourſhip. There are two ways of diſcovering the authour of any work, which may be called the external and internal marks of authourſhip. The external depend on two things, either on the authour himſelf, or perſons, who have had the means of being acquainted with the authour's proceedings. Should a perſon declare himſelf to be the authour of a given work, though this is not in itſelf

itſelf an abſolute proof, it is ſufficient to ſubject him to the praiſe or cenſure which would have been beſtowed on the authour. If the authour does not chooſe to avow himſelf, before thoſe, who might be ſuppoſed entitled to queſtion him on the ſubject, and it is aſſerted that he has elſewhere made this diſcovery, we muſt be particularly careful what credit we give to the teſtimony of the witneſſes, who come forward on ſuch an occaſion. We muſt examine their characters, whether they are friends or enemies, whether they are likely to ſpeak the truth fairly and openly, or whether the zeal of religion might not induce them to hazard a pious fraud by way of getting rid of a dangerous opponent to their fantaſtick theories. Beſides, we muſt conſider, whether they are competent to give a legitimate proof: if they can neither write nor read, it will avail but little, that they heard a perſon call himſelf the writer of a given work, as the work before the court may be of a different nature and tendency from that, whoſe title only was mentioned in their hearing.

Internal marks. The internal marks of authourſhip are various. It is unneceſſary before this learned audience to inveſtigate the methods, by which many of us, from having peruſed the writings, or heard the diſcourſes of any one, can pronounce with eaſe, whether a work in queſtion belongs to him or not. They can point out the beauties or the deficiencies of his ſtile, his plan, his language. They can ſay at once, ſuch a ſentence was certainly the effuſion of this writer's zeal, or, again, none but that doctour could have poſſibly indited this paragraph. For inſtance, who, that has read the prefaces of the learned promoter, or has heard his diſtinguiſhed eloquence in the divinity ſchools, can doubt that he is the authour of the late prolegomena? Could Cicero or Livy have written in ſuch a manner, could they have ventured on ſuch flights of fancy, could they have raiſed themſelves to ſurprize the

mind with ſuch beautiful changes of caſes and thoſe noble deviations in the moods of verbs? Are not their metaphors feeble when compared with thoſe uſed by our ſub-profeſſour? Where ſhall we find ſuch latinity, where ſhall we meet with ſuch beautiful ſpecimens of quotation *?

Dr. Kipling wrote his own prolegomena;

No one, who has the leaſt pretenſions to critical acumen, would, on balancing all theſe circumſtances, doubt that Dr. Kipling, as his ſignature declares, is and could alone be the authour of his prolegomena. The work itſelf alſo carries internal marks of the editour. The perfect reſemblance it bears to the original, having no other difference than that in ſeveral places the type is turned topſy turvy, convinces us that no one but the promoter has any claim to the merit of having corrected the preſs.

but is not puniſhable by law.

But, Sir, ſtrong as theſe internal marks are, and ſtronger perhaps cannot be brought, I muſt contend that they can be of no weight in a court of juſtice. It will not ſuffice to ſay, the ſtile is the ſame, the language is the ſame, the errours are exactly ſuch as might be expected from this authour; ſtill no upright judge would be contented. The ſtile and language may be imitated; there have been frauds even in the literary world, and nothing but external proof can make an authour amenable to a court of juſtice for any publication. Hence in the preſent caſe, when the promoter wanted to prove the pamphlet entitled Peace and Union to be mine, from a fancied reſemblance between certain paſſages in it, and others in a pamphlet written four years ago, the court very properly rejected the attempt.

External marks.

Many external marks are not available. Neither the title-page, nor publick eſtimation, nor writ-

* See the learned promoter's preface to what he calls a fac ſimile of the Codex Theodori Bezæ Cantabrigienſis.

ing,

ing, nor the delivery of books are, ſeparately or in conjunction, ſufficient proofs of authourſhip.

Title pages. White's.

Dr. First, with reſpect to title pages, I ſhall, Sir, bring two proofs, which I have no doubt will convince every unprejudiced mind, that my opinion is well founded. The one ſhall be taken from the univerſity of Oxford, the other from our own. We have all of us heard the fame of a celebrated profeſſour of oriental literature in the univerſity of Oxford. Some time ago he publiſhed under his own name a volume of ſermons, which he had alſo preached in the univerſity church. They were admired by every body, were held up as models of compoſition, as a complete victory over the hereticks, particularly thoſe, who go by the name of Socinians. Nothing could be urged againſt them, they were unanſwerable, ſo great a champion as the oriental profeſſour was invincible. So much and ſo univerſally were they eſteemed, that a late lord-chanceller, well known for his love of pure religion and his regard for the intereſts of the church, felt himſelf called upon to reward ſuch ſingular merit, and actually beſtowed on the perſon whoſe name they bore a handſome piece of preferment. Who could then, Sir, entertain the leaſt doubt of aſcribing infinite merit to this learned writer? Who at firſt ſuppoſed that this great man could get up and preach before the univerſity ſermons not his own? The ſuppoſition would have been treated with contempt, if a concurrence of circumſtances had not juſtified it, and the world is now in poſſeſſion of the proof, that theſe noted ſermons owe their celebrity to the united efforts of a once eminent diſſenting miniſter and a doctour of diſtinguiſhed merit of our own univerſity *.

* Mr. Badcock and Dr. Parr.

See White's ſermons for the Bampton lecture, and the controverſy on them, in pamphlets by Dr. Gabriel, Dr. Parr, and Dr. White.

Kipling's Beza. A book lately appeared among us under the titlc of Codex Theodori Bezæ Cantabrigienſis. Now, Sir, not venturing to truſt to my own interpretation of theſe words, I conſulted a learned friend, who declared it could mean only the codex of Theodore Beza, a Cambridge man. Was Beza then the authour of this work, or was he not? Did he write it? Did he compoſe it? Did he publiſh it? No ſuch thing. He wiſhed, that it might not be publiſhed. So far from his writing or compoſing of it, it appears to be a tranſcript of the four goſpels and the acts of the apoſtles, which he purloined from a monaſtery in the courſe of the civil wars of France, and either not liking the various readings contained in it, or fearing that it might be claimed by its proper owners, he made a preſent of it to the univerſity, to be edited in a future age by ſome promoter, though not ſo learned, yet as bigotted and bloody-minded as himſelf†, who ſhould make the great diſcovery, that Beza was a Cambridge man.

Thus, if title pages are to be taken as proofs of authourſhip, we may attribute to the oriental profeſſour of Oxford a variety of errours, which aroſe ſolely from his friends being unacquainted with the writings of Mohammed and his beſt commentatours, or celebrate him for the ſplendour of a diction which is not to be expected from one of his indefatigable induſtry, in diſcovering the roots of words and exploring the ſources of egyptian literature. The latinity alſo of the learned promoter might not only tend to perſuade us, that Beza is a Cambridge man, but fix on him the ſtain of various heretical opini-

† The learned promoter is very fond of this queſtion: Chriſtians are allowed to eat blood. Licet chriſtianis ſanguine veſci, and the univerſity has been abundantly ſatiated with it in his divinity ſchools.

ons,

ons, to which his codex is ſuppoſed to give a ſanction, and make him liable to a ſummons into the vice-chancel-ler's court.

Publick report. Publick eſtimation is alſo no proof of authourſhip. We have all of us either ſeen or heard a variety of epigrams, circulated not many years ago, full of reflections and ſcurrilous remarks on the heads of colleges and men high in rank and office among us. For ſome time it was the faſhion to aſcribe them to one of our moſt celebrated mathematicians. They went under his name. Every one pronounced them in common converſation to be his, and if he had not expreſsly contradicted the report by openly diſclaiming them, his fame might have gone down to the lateſt poſterity rather as a ſatiriſt than a mathematician. Thus would our firſt character for eloquence have been deprived of an honour which is due to him alone, and which it is to be hoped, he will enjoy henceforward unrivalled and without diſpute *.

Hand-writing. The hand-writing of a perſon is ſtill leſs a proof of authourſhip, as we all know how eaſily it may be forged, and a perſon muſt have attained either great ſagacity in the art of diſtinguiſhing hands, or great powers of ſwearing, before he can aſcribe a writing to any individual. Beſides, ſhould the writing be proved to be that of any perſon, it does not follow that he is the authour of the compoſition, he may have been only a copyiſt.

* Mr. Manſell, the public oratour, feels himſelf very much hurt at this paragraph, but thoſe who have known him for many years, have been no leſs hurt, that the epigrammatiſt ſhould turn a perſecuter: and of all the farces, with which in his ſportive humour he has amuſed the publick, none ſeem ſo perfectly contemptible and ridiculous as that which he has lately acted: that Manſell ſhould be a ſub-promoter, ſhould be an aſſiſtant to Kipling, ſhould affect to talk of religion, out-herods Herod.

Delivery of books. I need not dwell a moment on the abſurdity of ſuppoſing, that the delivery of books can prove authourſhip, as in that caſe we ſhall convert all our bookſellers into authours, or at leaſt make the deliverers of any work into the ſeller's hands members of the literary republick.

Promoter's proofs. Having thus, Sir, conſidered the general proofs of authourſhip, let us now examine thoſe which the promoter has brought in favour of his aſſertion. Theſe are of two ſorts, either by evidence or by writing. By the evidence of bookſellers and their ſervants, a printer of a publick paper, and certain gentlemen of the univerſity. On the evidence given by the tradeſmen and their ſervants I have not a ſingle reflection to make. Having no ſiniſter views, nor any other object than a plain ſtatement of facts, they told what they knew with a plainneſs and integrity which muſt do them credit in the opinion of all who heard them. But to what did all their evidence amount? The bookſellers and their ſervants relate that they received the pamphlet entitled, Peace and Union, either from Bowtell's boy or from his houſe, except that one declares that he received twenty copies from myſelf at my own room. The copies at Bowtell's appear to have been brought by the St. Ive's carrier, and Mr. Frend is ſaid to have ordered certain packets to be ſent to the bookſellers and to his friends in the univerſity. The printer declares, that he received the copy of an advertiſement from Mr. Marſh, to be inſerted in his paper, as alſo an order from Mr. Frend in perſon to repeat the advertiſement, and afterwards a note from him ſtating the price of the pamphlet. Being aſked whether he could ſwear to my hand-writing, he ſaid all that an honeſt man could on ſuch an occaſion. He was too well acquainted with the nature of an oath, and the miſtakes which a

man

man even in his profeſſion might make, to ſwear poſitively to the hand-writing of any perſon. Yet, Sir, I may venture to ſay that he has ſeen me write oftener and ſeen more of my hand-writing than any perſon in this audience, but he would give his conjectures only, and could not be brought by any means to make thoſe round aſſertions, which we heard with aſtoniſhment from a quarter, whence they were leaſt to be expected*.

Mr. Lloyd's evidence. Mr. Lloyd's evidence, Sir, is too curious to be paſſed over in ſilence. He appeared in court, as it ſhould ſeem, in a mode preſcribed by the promoter with a book in his hand. Enter Mr. Lloyd. Pray what have you in your hand, ſays the promoter? A book. What book is it? Peace and Union. Where did you get that book? At Mr. Lunn's ſhop. What did you get it for? To bring the charge home and to convict Mr. Frend, replies this unbiaſſed witneſs, who being queſtioned concerning ſome tranſactions at the vice-chanceller's lodge, declared that he did not come prepared to anſwer ſuch queſtions.

Written letters. The evidence from writing is chiefly confined to certain letters ſaid to have paſſed between Mr. Watſon and myſelf. The letters are produced in court, and to prove them mine, ſtep forward Mr. Kilvington and Mr. Plampin,

. . . . . Arcades ambo
Et jurare pares, et reſpondere parati.

They look on the notes, they are aſked whoſe hand-writing it is. For the firſt note, Mr. Frend is the reply: for the ſecond and third Mr. Plampin is not quite ſo poſitive. To this proof, that I wrote the notes, is added preſumptive evidence from a converſation, which I had with Mr. Watſon on the ſubject of the price of ſpinning wool, which happened then to engage the attention of

* See Mr. Kilvington's evidence.

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the univerſity; and as I carried with me ſufficient proofs that Mr. Watſon's ſtatement was wrong, I muſt neceſſarily have been the writer of the notes. There is however a better proof remaining. Mr. Watſon ſent a ſervant once with a note to me, on the receipt of which, I ſaid, it required no anſwer.

Dr. Dickens. In this account of the evidence, I have been in danger, I perceive, of omitting a very important one, though for what purpoſe he was brought here, neither the court nor myſelf can poſſibly deviſe. Dr. Dickens is a clergyman well known in Huntingdonſhire, and, with the ſingularity and vivacity of his converſation, many gentlemen in this univerſity have been frequently entertained *: he writes ſermons, which nobody reads, and generally ſends me, and many others of his acquaintance, a copy of his publications. Conſidering him as an harmleſs old man, who had not forgotten the few ſcraps of Latin which he learned at ſchool, I have ſometimes viſited him, when in his neighbourhood, and he occaſionally indulges me with a ſight of his ſermons in manuſcript. In return, he might be thought to have a claim on me for a copy of my publications; but he is brought here to relate a circumſtance, which taking place in Huntingdonſhire, cannot be made an object of enquiry in this court. The fact is ſimply this: he met me one day in the houſe of a ſtationer at St. Ives, where I frequently, as is uſual to perſons in the neighbourhood of a market town, go to execute any little commiſſion, to read my letters, or the paper, or, if occaſion requires, to write letters. Dr. Dickens found me writing ſome letters, and near me were ſome pamphlets, one of which I told him I was going to ſend to an old friend of his. He took up a pamphlet, and ſaid, he muſt take it with him, and, in the free and eaſy way for which this facetious divine is noted, he bore it off, not only without, but actually againſt my

* See the Dr's. evidence, p. 32.

conſent;

ſonſent; and this book, thus taken, is, it ſeems, brought here to prove that it is a production of my own pen.

Such is the evidence which the promoter has collected from all quarters, ſparing neither age nor ſex, and on which he means to reſt his poſition, that I am not only the publiſher, but alſo the authour, of the book in queſtion.

Proofs inconcluſive. Unfortunately, however, Sir, for the promoter, his proofs are inconcluſive. For, firſt, with reſpect to his witneſſes.—Several of them are of the twenty-ſeven, that is, of the original body of accuſers, and one, the moſt material, is his own ſervant. Beſides the general objection to the twenty-ſeven, there is one of a diſtinct and ſeparate kind, which I feel myſelf with infinite concern compelled to produce. It is ſo materially intereſting both to the witneſſes reputation, and my own, that I did not chooſe to truſt the explanation of my ſentiments on this head to the caſual obſervation of the preſent moment, but put it down in writing, and ſhall make no apology for reading it from this paper.

Here Mr. Frend read the following paper.

Mr. Kilvington's evidence. Mr. Kilvington declared, that 'My ſtudied attentions, ſhewn to him as they were, he believes, to all thoſe whom I was deſirous of proſelyting to my own opinions, were ſuch as to have impreſſed, very deeply on his mind, the recollection of my hand-writing.'

The world will be at a loſs to gueſs, how far any attention to a perſon can convey a knowledge of hand-writing, unleſs thoſe attentions had been ſignified by an intercourſe of letters: but they will be at no loſs to diſcover, that the proof of my hand-writing was the leaſt part of Mr. Kilvington's deſign. It was to gratify his own malignity, that he ſeized the opportunity of aſſert-

ing a falſehood, which he had forgot how eaſily I could repel. Had I been permitted to try his ſkill in the interpretation of hand-writing, he would have been abaſhed to ſee, under his own hand, an acknowledgement which totally did away the ſlander of ſuch an imputation. But I was told, that to urge the reading of his letters then, would weaken my defence. How, Sir, am I to defend myſelf now? Will this remonſtrance be entered on the records? Will theſe letters be inſerted in the acta curiæ? No, Sir, there will ſtill remain an accuſation without an anſwer—an accuſation compared with which, the preſent charge is abſolutely nothing. Sir, how ſlightly ſoever others may eſteem—how ſlovenly ſoever others may diſcharge the duty of a tutour in giving lectures, in my idea, it was one of the moſt ſacred depoſits which could be confided in the hands of man. To betray this truſt by prejudicing young minds, in thoſe points where they ought to be left to the fair reſult of their own enquiries, would be baſe and treacherous: yet this is the treachery with which I am charged. My name is to go down to poſterity, loaded with the infamy of practices I abhor; and from the imputation of which you were in vain ſolicited to protect it.

I do not mean, in vindicating my own conduct, to retort the accuſation upon another; but I mean to diſclaim, in the ſtrongeſt and the moſt publick manner, in the face of this court, and of god, a practice which I abhor.*

Mr. Kilvington cannot, I ſuſpect, have duly conſidered the extent and import of the word to proſelyte. The zeal

* The letters thrown down, were two received by me in the year 1788, the one dated July 19th, the other July 24th, which I accidentally found about a month after the firſt meeting of the twenty-ſeven at the vice-chanceller's lodge. On finding that Mr. Kilvington had taken ſo active a part in the proſecution, I ſhewed

zeal of proſelyting is of a peculiar nature, appropriated in ſcripture to a particular body of men. Ye, ſays our ſaviour, compaſs ſea and land to make one proſelyte.

ſhewed them to ſome of my friends, as inſtances of the gratitude of the ſaints. The greater part of them is taken up with the buſineſs of college teſtimonials, and at the concluſion of the firſt Mr. Kilvington's words are:

I ſhall make no further apology for the trouble I am now giving you; but muſt ſay, that it will give me the greateſt pleaſure to render you any ſervices in my power, either in this, or any other part of the world which I may chance to be fixed in.

I am, with great reſpect, dear Sir,
Your very faithful and affectionate ſervant,
EDWARD KILVINGTON, Jun.

In the ſecond letter, he tells me, after ſome further buſineſs on the teſtimonials:

The cure, which I have engaged to accept, conſiſts of two pariſhes, Knockholt, and Downe, in the county of Kent. They are ſituated in a moſt delightful part of the country, between Bromley and Sevenoaks. The preſent incumbent is the miniſter of our pariſh church; and, as he will be deſirous of reſiding occaſionally for a week or two, I have engaged on thoſe occaſions to officiate for him in London. The allowance is to be fifty pounds a year, together with the uſe of the parſonage furniſhed and provided with attendance. I am perſuaded you will be happy to hear of my ſucceſs, and I have therefore given you ſo circumſtantial an account.

I muſt again apologize for the trouble which I am preſuming to give you, eſpecially as I can never hope for an opportunity of diſcharging the obligations which I already labour under.

I am, with great eſteem, dear Sir,
Yours, moſt affectionately,
EDW. KILVINGTON.

Now is it probable, that, if I had endeavoured, with ſtudied attentions, to draw off Mr. Kilvington from the church, he would have given me ſo circumſtantial an account of his entrance into the office of miniſter in that church? Would he have been perſuaded, that I ſhould be happy to hear of his ſucceſs in it?

To whom does he ſay this? To whom but the ſcribes and phariſees? And who were they? Take a few traits of their character, as it ſtands afterwards marked in the language of our ſaviour himſelf. All their works they do to be ſeen of men: for a pretence they make long prayers: they outwardly appear righteous and unto men, but within are full of hypocriſy and iniquity.

I am well aware how apt we are to apply antient deſcriptions to preſent manners; and I ſhould not wonder if the world were ready to diſcover in this place a ſet of men, to whom the phariſaical character applies at leaſt as ſtrongly as to me: but let me caution them againſt raſh judgement; the Margaret profeſſor has amply vindicated the character of thoſe people from ſuch an imputation. Bigots, and zealots, ſays he, are wonderfully expert in making infidels; they never, I believe, convert any *.

Mr. Frend ceaſed reading, and continued his diſcourſe.

Maxims of civil law. I have ſaid that many of the witneſſes were of the twenty-ſeven, and one is the promoter's own ſervant. Now, as the determinations of the court muſt be made ſecundum jus civile, it is evident that theſe witneſſes are inadmiſſible. Theſe are the maxims of the civil law.

If the witneſs has any intereſt in the fact concerning which he is deſired to give evidence, he will be rejected. For one cannot be ſure that he will make a declaration contrary to his own intereſt.

Nullus idoneus teſtis in re ſua intelligitur. l. 10. de teſtib.

The perſons who have a dependance on the party, who would make uſe of their teſtimony, ſuch as menial ſervants, being ſuſpected to favour the intereſt of their

* See Mainwaring's diſſertation before his ſermons.

maſter,

maſter, and to declare only what he deſires, their evidence ought to be rejected.

Idonei non videntur eſſe teſtes, quibus imperari poteſt, ut teſtes fiant. l. 6. de teſtib.

Teſtes eos quos accuſator de domo produxerit, interrogari non placuit. l. 24.

With theſe maxims of the civil law, the opinion and the practice of our courts of common law agree. Courts of juſtice, ſays lord Mansfield, do not ſit to weigh what degree of temptation the minds of men are capable of reſiſting, but to take care, that they ſhall not be expoſed to any temptations whatſoever. But even, if ſuch evidence as that of the twenty-ſeven, and the ſervant of a proſecuter, were admiſſible in vulgar courts, in this, from the rules of the civil law, it muſt neceſſarily be rejected.

Hand-writing. The ſimilarity of hand-writing, is a ſpecies of evidence which, in a cauſe of this nature, is equally inadmiſſible. The memorable and excellent Algernon Sidney was convicted by a Jefferies, on a compariſon of hands, yet, to the honour of our legiſlature, his attainder was reverſed; and it is declared in the act of parliament paſſed for the reverſal *, that compariſon of hands is no evidence of a man's hand-writing in criminal caſes, and the ſame doctrine is acknowledged and laid down in the ſtate trials, and Hawkins's pleas of the crown †.

Diſtribution of books. The whole that has been brought forward on the diſtribution of books, falls to the ground, from the ſingle evidence of Mr. Bowtell, who is my agent for the diſtribution of books, and has informed you, that he has frequently received from London, and other places, parcels of books of various authours, to be ſold or diſperſed by him on my account. It is alſo in the recollec-

* William and Mary, c. 7. of the private acts.
† Hawkins, 431.

tion

tion of a conſiderable part of this audience, that I have frequently diſtributed myſelf books in the univerſity. During the agitation of the queſtions on the ſlave trade, and the repeal of the teſt act, I diſtributed a vaſt number of books in this place, and carried, in perſon, to every head of a houſe, a valuable work of biſhop Hoadley on the liberty of conſcience. Indeed I ſpeak, I think, within compaſs, when I ſay, that ten thouſand books of various ſizes, written by various authours, have been diſperſed from this place, either by myſelf, or by Bowtell, under my direction. The diſtribution of theſe books, therefore, is no proof of my being the authour of this work; for, if ſuch a proof is allowed, on the ſame principles I may be called to an account for many ſentiments totally oppoſite to my own, advanced by a variety of writers.

Mr. Watſon's wool-ſpinning.

It would take up too much time to examine ſeriouſly the evidence given by Mr. Watſon, and a long and irrelevant correſpondance about the price of ſpinning wool. Well indeed, Sir, might you expreſs your curioſity to know how this buſineſs could poſsibly affect the queſtion before the court, or what ſtrange reſemblance the promoter had found out between wool-ſpinning and writing a book! There is not a word about wool-ſpinning in the pamphlet in queſtion. Mr. Watſon indeed ſays in one of his letters, that he did not refer to Mr. Frend's publication, and Mr. Frend replies that he did not refer to his publication, but ſolely to an aſſertion of Mr. Watſon reſpecting wool-ſpinning. But this was quite enough, the ſecret was now out, Mr. Frend had ſaid his publication, and the familiars, who were upon the watch for every incident, ſeized this fatal note with eagerneſs and bore it off in triumph. It was read at the maſter of arts coffee-houſe, then at St. John's, from thence it travelled to Caius to the ſub-promoter Mr. Belward *, thence

* Mr. Belward got up ſome time after, and with ſome warmth declared, that the notes were never brought to him. How this great

thence to the promoter; all read, all rejoiced, and all with the ſame ſagacity concluded, that Mr. Frend muſt certainly be the authour of Peace and Union, becauſe he he did not, he expreſsly ſaid, refer to his publication. Thus the promoter boldly told the court, that the pamphlet entitled Peace and Union muſt be Mr. Frend's, becauſe he ſuppoſes that Mr. Watſon and Mr. Frend could not be talking of any other publication; whereas it is well known, that Mr. Frend has written ſeveral books, and during the courſe of the winter he has certainly been engaged and is now engaged both in writing and publiſhing. On the whole the remark of the two countrymen ſeems to me the beſt that can be made on this wool-ſpinning buſineſs. Seeing Mr. Watſon ſtanding ſo conſiderable a time in a very forlorn ſituation, examined by the promoter, confronted with other witneſſes, queſtioned by the bench, again examined, again confronted, reading letters about wool, and anſwering interrogatories on the ſame ſubject, alas! poor gentleman! ſays one to the other, he is guilty, he certainly ſtole the wool.

The whole evidence null and void.

Thus, Sir, I have examined this voluminous body of evidence, which the promoter has taken ſuch pains in compiling and arranging, and with which he has fatigued us for ſo many days. Its little worth is apparent from the remarks already made on it, and the promoter ſeems to have been conſcious of the weakneſs of his cauſe, and deſirous that it might fall to the ground, as he has taken a ſtep which renders the whole of his proceedings null and void. Sir, I contend that the taking of the evidence out of court, the giving of it to the per-

great ſub-promoter came to be overlooked has given riſe to various ſuſpicions. Mr. Frend begged his pardon, for giving too haſty credit to the hiſtory in this reſpect, and ſhould be very glad to abſolve Mr. Belward from any other abſurdity in the management of this cauſe, for which, as a ſub-promoter, till he vindicates himſelf before the publick, he ſtands accountable.

ſon

ſon who is moſt materially concerned in converting it to his own purpoſe, renders it both on the principles of the civil law and the law of England incapable of being uſed by the judges of this court: it has loſt its authenticity, it cannot be conſidered as the ſame evidence, it cannot be made in this or any future court of review the foundation of a judicial deciſion.

The civil law ſays: It is not enough to give the declaration of a witneſs the effect, which it ought to have in juſtice, that the witneſs himſelf writes or cauſes another to write his evidence, and that he gives it or ſends it to the judge, but it is neceſſary, that he appear before the judge, and that the judge himſelf interrogate him, and put down his declaration in writing.

The declarations, Sir, as well as the interrogatories were put down in writing by the regiſtrary, and they have ſince been out of court for ſome days in the poſſeſſion of the promoter. That they are vitiated by ſuch a ſtep is evident: for, how can the judge now know that the interrogatories and the anſwers, by which he is to determine the cauſe, are the ſame that were committed to writing in his preſence? The common law of England is equally tender with reſpect to evidence, and does not permit a cauſe to be decided by a jury by any other evidence than that which was produced before the court, and if there is the appearance only of any other evidence being laid before the jury, the cauſe falls ipſo facto to the ground. This appears clearly to be the law of England from the caſe of Metcalfe and Dean (Croke's reports, folio 189) in which a jury withdrew out of court, and, after having called a witneſs to repeat the evidence delivered in open court, returned and gave their verdict for the defendant. This was repreſented to the judge, and the jury in vindication of themſelves ſaid, that the evidence given to them privately was the ſame in effect as that given in open court, et non alia nec

diverſa. The judge however conſidered this private examination by the jury as illegal and ſet aſide the verdict.

If then the mere repetition of a viva voce evidence in preſence of a whole jury, who could not be ſuppoſed at all intereſted in the deciſion, was ſufficient to ſet aſide their verdict, how much more ſtrongly muſt the rule obtain in a caſe, where the queſtions and anſwers are diſtinctly repeated and put down in writing, and the proſecuter has been permitted to keep the writing in his own poſſeſſion, and to garble it as may beſt ſuit his own corrupt purpoſes.

Here the commiſſary interpoſed and deſired Mr. Frend to underſtand, that theſe minutes were no record, they made no part of the acta curiæ. Mr. Frend replied that in his idea this made no difference in the caſe, they certainly conſtituted the body of evidence by which the court was to decide. Then addreſſing the judge he continued.

On theſe grounds, Sir, I contend, that there is now no evidence before the court, and the judge, who is bound by our ſtatutes to determine ſecundum jus civile, has nothing before him, on which to ground a judicial deciſion: therefore, after having read my objections to ſeveral witneſſes, I ſhall beg leave to proteſt againſt this particular informality, and the uſe of the ſuppoſed evidence, returned by the promoter to the regiſtrary, either in this or any other court of juſtice.

Here Mr. Frend read the following papers:

I.

I object to the promoter's mode of producing evidence as unprecedented and unwarrantable in any court of juſtice.

1. As the witneſſes were not only examined in the preſence and the hearing of each other; but as the witneſſes were repeatedly reminded not only of what they had ſaid before, but alſo of what the preceding witneſſes had teſtified.

2. As it was apparent, in many inſtances, and expreſſly avowed, by ſeveral of the witneſſes, that the promoter had himſelf directed the evidence which they were cited to give, and prepared with materials for his purpoſe.

3. As the witneſſes were not allowed to go through their reſpective evidences at once, but were called and re-called frequently, in a manner totally contrary to the practice of all other courts.

4. As the interrogatories were very frequently inſidious and leading queſtions.

5. As witneſſes were perſonally confronted, in order to prove identity, and not left, as they uſually are, to the caſual diſcovery of the perſon.

II.

1. I object in particular to the evidence of Harvey Alger as inadmiſſible, he being the menial ſervant of the promoter of the cauſe.

2. I object to the evidence of the Rev. Mr. Lloyd, he being one of my original accuſers and directers of the proſecution, and having expreſsly avowed in court a diſpoſition totally irreconcileable with the purpoſe of candid teſtimony.

3. I object to the evidence of the Rev. Mr. Kilvington, he being alſo an original accuſer and directer, and having beſides uttered, in the courſe of his evidence, an irrelevant

relevant and deliberate falſehood, which ought to invalidate every other part of his teſtimony.

4. I object to the evidence of the Rev. John Plampin, and of Mr. Mathew, they having alſo been original accuſers and directers, and having beſides already pre-judged the cauſe in my own college, and condemned me without giving me an opportunity of making my defence.

III.

I object to the validity of the minutes of evidence in the ſtate in which they now appear ſince they have been taken out of court and put into the promoter's hands; and I muſt beg leave to enter my proteſt againſt this informality, which is utterly repugnant to the eſtabliſhed forms of law.

W. FREND.

Proteſt of the UNDERSIGNED againſt the validity of the evidence in this cauſe.

The witneſſes cited by the promoter of this cauſe having been examined in the court upon interrogatories propoſed by the ſaid promoter, and taken down in writing by the regiſtrary of the court before they were put to the witneſſes, and the anſwers of ſuch witneſſes having been alſo taken down by the regiſtrary, the evidence of the ſeveral witneſſes ſo recorded by the regiſtrary, ought to have been kept in court as an official minute of ſuch evidence; but the original minutes of the evidence, as taken in court, having been delivered out of the hands of the proper officer, and put into the cuſtody of the promoter, I do proteſt againſt ſuch evidence, and do declare that it has loſt its authenticity, and cannot be conſidered as the ſame evidence, or ever be made, either in

this court, or any future court of review, the foundation of a judicial deciſion *.

W. FREND.

The vice-chanceller now aſked the regiſtrary, whether the minutes appeared in any part to have been at all altered? The regiſtrary anſwered, No. The jury, Sir, ſaid Mr. Frend, in Metcalfe's caſe, declared the ſame: the witneſs had not varied a tittle: the evidence was nec alia nec diverſa. You know, Sir, addreſſing himſelf to the commiſſary, you know the civil law better than I do. I ſubmit the caſe to your conſideration.

Mr. Frend then deſired the third article in the charge to be read.

The article was read.

'3d. Alſo, We article and object to you the aforeſaid William Frend, That in the twenty-ninth page of the aforeſaid book or pamphlet you have defamed the public liturgy of the eſtabliſhed church, by affirming that 'it is very far from the ſtandard of purity in doctrine, which is required in ſuch compoſitions:' and we article and object as above.'

Liturgy defamed Sir, I am charged in this article with defaming the publick liturgy of the eſtabliſhed church. Defaming the liturgy!—defaming, Sir, is a harſh word—a very harſh word, and ought to have been well conſidered before it had been applied to any obſervation, which the authour of Peace and Union makes upon the liturgy. I will beg leave to read the paſſage, as it ſtands in the original, not in the garbled and mutilated condition in which the promoter has thought fit to produce it. 'The liturgy of the church of England is a compoſition derived from the maſs-book of Rome, over which, if it has in ſome reſpects a manifeſt ſuperiority, it is very far from that ſtandard of purity in its arrangement, language,

* Theſe papers were afterwards delivered into the vice-chanceller's hands.

or

or doctrine, which is required from ſuch compoſitions.' Is then the liturgy a divine or a human compoſition? If it is a divine compoſition, to aſſert that it is the leaſt removed from the ſtandard of purity, would be certainly defamation; but if we allow it to be human, it certainly cannot be defamation to affirm, that it may, nay, Sir, that it muſt be imperfect. Is the authour of Peace and Union then the only perſon who eſteems it imperfect? Is it not acknowledged to be imperfect by the wiſeſt and brighteſt luminaries of the church? I appeal to archbiſhop Sancroft, who, on account of ſome imperfections in the burial ſervice, declared, that he could not take upon himſelf the cure of ſouls.—I appeal to archbiſhop Tillotſon, who wiſhed the church well rid of the athanaſian creed.—I might appeal to the preſent biſhops of London and Ely, who, with ſeveral of their brethren, the moſt reſpectable of the clergy, had their meetings, to obtain ſome relief in the preſent mode of ſubſcribing to the articles and the book of common prayer. Nay, that it is not defamation to ſuppoſe the liturgy imperfect, I appeal to one of the ſub-promoters, to Mr. Mainwaring, Margaret profeſſour of divinity, who, not many years ago, reprimanded Dr. Pearce, then fellow of St. John's college, for reading the athanaſian creed in the chapel, on one of the appointed days *.

by archbiſhops and a ſub-promoter.

* Here Mr. Mainwaring got up in a great paſſion, and declared, that it was an abſolute falſehood; that he did no ſuch thing. Mr. Frend turned to the vice-chanceller, and offered to prove it, but was deſired to go on. Mr. Frend has been ſince informed, that he called Dr. Pearce, maſter, inſtead of fellow, and it is ſuppoſed, the ſub-promoter took advantage of this miſtake. But be this as it may, Mr. Frend can produce one of the moſt reſpectable members of the univerſity, to atteſt, that Dr. Pearce related this hiſtory to him. Whether Dr. Pearce the maſter of Jeſus college, has belied the lady Margaret's profeſſour, or the lady Margaret's profeſſour has forgotten the heterodoxy of former days, I leave to theſe two reverend divines to ſettle in any way they pleaſe.

Thus

Defects pointed out. Thus ſupported, Sir, I ſhould be warranted in ſaying, that the authour has advanced nothing in the paſſage quoted but what is ſtrictly true. Let any one examine the book for himſelf, and he will find the beſt and fineſt part of the whole ſervice not free from that imperfection, to which all human works are ſubject. The pſalms, as read in the churches, are miſerably defective, —they are worſe; they contain ſentiments totally repugnant to that charitable and humane ſpirit, which breathes in every page of the goſpel, and is required of every follower of Chriſt. With what horrour muſt a ſerious chriſtian revolt from thoſe dreadful execrations, which whole congregations unite in uttering with their mouths, while the ſentiment, it is to be hoped, is far from their hearts. Let his wife be a widow, ſay they, and his children fatherleſs: let the extortioner conſume all that he has: and in the ſame manner they go on with imprecations, which, if they are pardonable in others, are certainly unbecoming in the devotion of chriſtians. The learned may ſatisfy themſelves that there is an errour in the tranſlation: I know it, Sir, the original conveys no ſuch meaning. A jewiſh congregation would not think itſelf authorized thus to devote the moſt depraved of their ſpecies to the extreme of human wretchedneſs.

Inſtances of imperfection might eaſily be enumerated, ariſing from various cauſes. Some are owing to the language being antiquated. Who would ſay, now, prevent us, O lord, in all our doings, when he meant to pray for ſuccour or aſſiſtance? Why muſt the people in their addreſſes to God, be confined to a language, which, in all other caſes, would expreſs a ſenſe totally different from their real meaning? It is to the uſe and the capacities of common congregations, that the common prayer ſhould be adapted. Is it right that the people in their devotions ſhould be left to the alternative of praying for they know not what, or of finding out their own meaning by canons of criticiſm, or antient gloſſaries?

To

King James's opinion. To many ſimilar defects in language, we may add others, from the nature of the arrangement, owing to the liturgy having been taken from the maſs-book of Rome, over which indeed the authour of Peace and Union aſſerts, that it has a manifeſt ſuperiority. Had he not, however, made ſuch a declaration—had he ſaid, that it was only as good as the maſs-book, he would have had royal authority for ſuch an aſſertion; and he could not have been accuſed of defamation without impugning the ſagacity of one of our wiſeſt monarchs. In the general aſſembly at Edinburgh, in 1590, king James, afterwards the firſt of that name in England, gave this as his opinion of our liturgy: 'As for our neighbour kirk of England, their ſervice is an evil-ſaid maſs in engliſh; they want nothing of the maſs but the liftings.'

The ſpeaker's opinion. But, Sir, whatever may be the opinion of crowned heads on this liturgy, I make no ſcruple of declaring in publick, what I have repeatedly aſſerted in private, that the liturgy of England is ſuperiour to the liturgies eſtabliſhed by publick authority any where in Europe. I have read over many latin, greek, and hebrew liturgies: with them I have compared ours, and it has always been to the advantage of the latter. Not that it ſhould be underſtood, that every part in the engliſh liturgy is ſuperior to every part in thoſe already mentioned. It would be abſurd to ſuppoſe, that the pſalms, in engliſh frequently miſ-tranſlated, are ſuperior to the originals in the hebrew language, or that thoſe parts of our ſervice, which are tranſlated from the greek, are better than the ſame parts in the greek liturgies; but, on taking the ſeveral liturgies together, and conſidering their various excellencies and defects, the engliſh ſeems to have an evident ſuperiority.

Not the author's intention to defame. That it was not the authour's intention to defame the liturgy, is clear, from his own

own words in the ſame page. Does he not point out a mode of improving it, by adviſing that commiſſioners of the engliſh church ſhould reviſe the book of prayers, and propoſe a form better ſuited to the preſent times. Would he have ſaid, better ſuited to the preſent times, if he meant to defame? Would he not have ſaid that it was not fit to be uſed in any times? Again, he ſays, that the new liturgy ſhould not ſuperſede the one in preſent uſe; that no one ſhould be forced to adopt it, but that it ſhould be left to the option of each congregation to uſe the old or the new liturgy. Is this, Sir, the language of defamation? In recommending improvements to be made in human compoſitions, there can be no defamation, and this circumſtance alone would be ſufficient to prove the wickedneſs and the malice of the promoter, if they were not both apparent in his mode of quoting this obnoxious paſſage.

Promoter's comprehenſion,

Sir, when the promoter read over this article, I naturally turned to the page quoted, and requeſted him to point out the paſſage which I in vain attempted to diſcover. He was content with ſaying, that it might be found there; he had left out only a few things from his own inability to underſtand what they meant. He did not comprehend purity of arrangement. Be it ſo: Is the promoter's comprehenſion then to be the criterion of ſcandal and defamation? What writer can be ſafe if ſubject to the limitations of his taſte or intellect? He has long ago forgotten thoſe writings which are intended to refine our taſte at ſchool and in this place, or a paſſage from a profane writer of antiquity might have informed him, that

. . . . . Cui lecta potenter erit res
Nec facundia deſeret hunc nec lucidus ordo.

How to have been aſſiſted.

Rejecting, however, as he does, every thing that ſavours of heathen lore, he might ſtill have availed himſelf of the aſſiſtance, which would

would readily have been given him by a writer well known for the elegance of his diſſertations. That elegans formarum ſpectator, who ſits by him as ſub-promoter in this buſineſs, would have furniſhed him with an explanation of the paſſage, and taught him that purity of arrangement is only another expreſſion for lucidus ordo *.

Promoter to be indulged, when and where.

But the promoter is not only ignorant of the nature of arrangement; he conſiders purity of language alſo as an inexplicable idea. From the late ſpecimens, with which he has favoured the world, we are certainly juſtifiable in allowing this point to him in its full extent. Who that has read his late prolegomena, will impute to him the leaſt acquaintance with purity of language? If he himſelf was alone concerned, he would have a right, without doubt, to reject, from every pamphlet, the parts which ſeem to him unintelligible; but, Sir, when he brings forward an accuſation, the caſe is materially altered. Am I to be charged with a crime from his want of comprehenſion? Will it be allowed in any court of juſtice to bring forward a paſſage, garbled in a manner to ſuit the proſecuter's deſigns, without any regard to the authour's meaning?

Charge invalidated.

Sir, I contend that the promoter, by bringing forward a paſſage in this manner, has rendered his charge futile and ridiculous; it could not be urged in any court of juſtice; and his attempt to prove me guilty of defamation, falls neceſſarily to the ground. I requeſt that the fourth article may be read.

Here the fourth article was read.

'4th. Alſo, We article and object to you the aforeſaid William Frend, That in a paragraph, contained in pages

* See Mr. Mainwaring's Diſſertation prefixed to his ſermons.

thirty-ſix, thirty-ſeven, and thirty-eight, of the aforeſaid book or pamphlet, beginning at the words, 'The ſame paſſions,' and ending with the words, 'epiſcopal convocations,' you affirm that the public worſhip of the great body of chriſtians is idolatrous; including in this charge the members of the church of England, as evidently appears from the context: and we article and object as above.'

Promoter reads Gil Blas.

In the former article, Sir, I was accuſed of defamation: a more heinous offence is now alledged againſt me; that of calling the worſhip of the church of England idolatrous. On reading over this charge, I referred to the part of the book on which it is grounded, but after a very exact ſcrutiny, could not find, to my ſurprize, the term idolatrous mentioned. Recollecting, however, the character of the promoter, and conſidering the nature of the books with which he refreſhes himſelf after his ſeverer ſtudies, I diſcovered at laſt what had led him to inſert this among his other articles. The promoter, Sir, can now and then in private relax his features, and he is particularly delighted with a celebrated work, with which we are well acquainted—the Memoirs of Gil Blas de Santillane. Meditating one day on this proſecution, he was reſolved to imitate the facetious hero of theſe memoirs, and to try whether he could not play as good a trick on an unfortunate academick, as the merry ſpaniard had done on a wealthy tradeſman. Gil Blas, with his companions, dreſſed themſelves up exactly like the promoter and the managers, and one of them, acting the part of the promoter, preceded the reſt, and knocked at a tradeſman's door—it was opened by a boy, who, petrified at the ſight of the holy inquiſitours, in a trembling voice anſwered the promoter's queſtions. Does your maſter love children? Oh! yes, ſays the boy, yes, my maſter is very fond of children indeed. Write down that this man ſeduces children for a ſacrifice at the paſchal ſupper. Do you ever eat pork? No, ſays the boy,

I can't

I can't ſay that we have pork often at our houſe. Write down that they never eat pork, that he is a jew convict. Pray does your maſter walk very ſlowly on Saturdays? Yes, ſays the boy, my maſter always walks very ſlowly indeed. Write down that he ſabbatizes, that he never goes beyond a ſabbath day's journey on a Saturday.

Borrows one of his tricks.

Pleaſed with this ſtory, our promoter called together his brother managers, put the book into their hands, and deſired them to read the paſſage quoted in the article. Do you ſee any thing in this paſſage, ſays he, to a gentleman, celebrated for his eloquence?* No; I can't ſay that I ſee any thing, except ſomething about the orgies of Bacchus. Orgies of Bacchus! blaſphemous wretch! write down idolatrous. Is there any thing elſe? Yes, ſays a noted civilian†, here are the rites of the euchariſt. Write down immediately, he derides the euchariſt. What elſe is there? The great body of chriſtians, replies a third‡. Great body of chriſtians! that is the church of England: write down, the church of England is idolatrous. Home went the managers, in amazement at the ſagacity of their learned promoter, and as well pleaſed at this diſcovery as the ſpaniards were with the tradeſman's ducatoons.

Promoter's ſhameful conduct.

Sir, the charge of the promoter deſerves to be treated in this ludicrous manner, and I ſhould be content with expoſing him thus to your deriſion, if, by an artifice of his, he did not rather merit your contempt than your ridicule. He has quoted the laſt ſentence of a paragraph, and endeavoured to fix on me the charge of comparing together the orgies of Bacchus with the rites of the euchariſt. I deny the charge. No ſuch compariſon is drawn, nor could it poſſibly be drawn. I diſdain the imputation of having at any time reviled, either by word or deed, any act or inſtitution of my ſaviour. The orgies of Bacchus were contempti-

* Mr. Manſell. † Dr. Jowett. ‡ Mr. Belward.

ble heathen rites, degrading to human nature: the euchariſt had the ſanction of our ſaviour's authority, and was calculated to keep in the minds of the early chriſtians the greateſt event that had ever taken place in the hiſtory of mankind. I deſpiſe the one, and I revere the authority of him who inſtituted the other. Let the promoter continue his daily ſacrifices to Bacchus, but let him not impute to me any approbation of them, much leſs ſuſpect me of making a compariſon which I deteſt and abhor.

A well known truth. Sir, the paſſage contains no compariſon: it affirms a truth, a well known truth, authenticated by the hiſtory of all ages. The authour, alluding to the effect of prejudice in a late event* diſgraceful to this country, properly remarks, that the ſame paſſions produce on certain minds the ſame effects. It matters not, whether prieſts affect to be the diſciples of a maſter, who taught nothing but love and benevolence, or are the votaries of a religion replete with impurity, if their minds are the ſame, and ſimilar occaſions offer, the effects produced will be exactly the ſame. This truth need not be inſiſted on here; it is exemplified in the whole conduct of the twenty-ſeven: but, ready as they are to oppoſe every truth by which their ſacerdotal authority is endangered, let them not ſuppoſe that this is the caſe with every prieſt. There are very many reſpectable clergymen who feel no ſuch alarms, and could never be prevailed on to unite with the twenty-ſeven. Why ſhould I point out to the promoter the man whoſe chair he at preſent occupies, the biſhop of Llandaff, who by his conduct and writings, proves evidently, that he is not among the claſs of prieſts alluded to? He would not ſacrifice his religion, or oppoſe the progreſs of truth, for any baſe views whatſoever; and I could, if neceſſary, enumerate many others of the ſame ſentiments, who by their learning and abilities do credit to this univerſity.

* The riots at Birmingham.

But

Promoter's diviſion of chriſtians.

But, Sir, to leave this point, which has nothing to do with the charge of calling the church of England idolatrous, let us conſider the promoter's diviſion of chriſtians, on which he grounds his opinion that the church of England muſt be meant by the authour of Peace and Union. Chriſtians, ſays he, are evidently divided by the authour into three claſſes, the church of England, the diſſenters from it, and a certain body of men called unitarians. How contemptibly ridiculous and abſurd this diviſion is, muſt appear evident to any one who gives himſelf the trouble of reading the paragraph in queſtion. Beſides, what muſt we think of a profeſſour of divinity, who makes a diviſion, by which he excludes the church of England from being a unitarian church? Is the church of England then not an unitarian church? Does he conceive that his church worſhips a plurality of gods? For my own part among the various ſects of chriſtians with which I have been converſant, I know but of one perſon, who has expreſsly denied himſelf to be an unitarian.

Church of England unitarian.

Sir, the church of England will give its ſanction to no ſuch ſentiment. She will claim her right in ſpite of the promoter to the title of unitarian, and whatever may be the ſentiments of different ſects on the ſubject of the divine unity, they will find it difficult to maintain that ſhe is not a unitarian church. Does not her firſt article expreſsly aſſert the unity of the godhead? and if there is any credit to be given to language, we muſt on her own claims call her an unitarian church. As a member of that church you, Sir, are an unitarian: all who hear me are unitarians, if they agree with the church in aſſerting the unity of the godhead.

Promoter's ignorance of church hiſtory.

But what is the number of the unitarians whether of the church of England, or of the body to which the promoter has

has appropriated this title? Add to them all the diſſenters and what proportion do they bear to the chriſtians in Europe? The authour of Peace and Union, talking of the great body of chriſtians, ſpeaks of a body of men, which has for fourteen hundred years maintained opinions nearly ſubverſive of true chriſtianity. Can this be ſaid of the church of England which has not been three centuries in exiſtence? The ſuppoſition is abſurd, and the diviſion of chriſtians, which the promoter would introduce, proves only his total ignorance of church hiſtory.

Nothing about idolatry in the book.

Suppoſing that the church of England was involved in this remark, and was intended by the term, 'the great body of chriſtians,' how is it charged with idolatry? Sir, you will be aſtoniſhed, all who hear me will be aſtoniſhed, when they are told that there is not in the whole pamphlet a ſingle paſſage, in which the terms idolatry or idolatrous occur. How then can the writer honeſtly be charged with fixing ſuch an epithet on any ſect of chriſtians?

Church of England not idolatrous.

But, Sir, whether, by the great body of chriſtians in the paſſage alluded to, we are to underſtand the church of England or not, this I will undertake to aſſert for myſelf, and to atteſt in the moſt publick manner, that the church of England is not idolatrous. I have never called it idolatrous, nor ſuppoſed it to be idolatrous. I totally diſavow the charge, and in denying it do repeat, of this charge in particular, that it is falſe, wicked and malicious*. I requeſt that the fifth article may be read.

Here the fifth article was read.

* The papiſts worſhip ſeveral created beings, the ſocinians and the church of England worſhip only one created being. Mr. Frend diſapproves of the worſhip of theſe three parties, and worſhips only the god and father of Jeſus Chriſt.

5th Article.

'5th Article. We article alſo and object to you the aforeſaid William Frend, That in the thirty-ninth page of the aforeſaid book or pamphlet, you have aſſerted, that 'eccleſiaſtical courts, eccleſiaſtical ranks and titles are all repugnant to the ſpirit of chriſtianity:' and we article and object as above.'

Promoter omits eccleſiaſtical dreſs.

In this article I am charged with ſaying that eccleſiaſtical courts, eccleſiaſtical ranks and titles are all repugnant to the ſpirit of chriſtianity. On peruſing this article and comparing it with the original, the firſt thing which ſtruck me was the omiſſion of a certain particular, for which I could not at firſt account: eccleſiaſtical dreſs is as much objected to in the pamphlet as eccleſiaſtical courts and titles. There muſt be ſomething, I ſaid within myſelf, extraordinary in this; the promoter has certainly his fears that all is not right about his dreſs, and that any remarks on this ſubject muſt be injurious to his cauſe. At laſt I reſolved to conſult the canons which he has ſworn to obey, and I ſhall now read to you the ſeventy-fourth, in which decency of apparel is enjoyned to miniſters.

Canon of the church.

'The true, ancient and flouriſhing churches of Chriſt being ever deſirous that their prelacie and clergie might be had as well in outward reverence as otherwiſe regarded for the worthineſſe of their miniſterie, did thinke it fit by a preſcript forme of decent and comely apparell to have them knowen to the people, and thereby to receive the honour and eſtimation due to the eſpeciall meſſengers and miniſters of almighty god. Wee therefore following their grave judgement, and the ancient cuſtome of the church of England, and hoping that in time new fangleneſſe of apparell in ſome factious perſons will die of itſelfe, doe conſtitute and appoint, That the archbiſhop and biſhops ſhall not intermit to uſe the accuſtomed apparell of their degrees.

degrees. Likewiſe all deanes, maſters of colledges, archdeacons and prebendaries in cathedrall and collegiate churches (being prieſts or deacons) doctors in divinitie, law and phiſick, bachellors in divinitie, maſters of arts, and bachellors of law, having any eccleſiaſtical living, ſhall uſually weare gownes with ſtanding collers and ſleeves ſtreight at the hands, or wide ſleeves, as is uſed in the univerſities, with hoods or tippets of ſilk or ſarcenet and ſquare caps.'

Vice-chanceller interrupts. Here Mr. Frend was interrupted by the vice-chanceller, who ſaid, ſurely, Mr. Frend, you do not think that this will be of uſe to you in your defence. Certainly not, replied Mr. Frend, and went on reading.

'And that all other miniſters admitted or to be admitted into that function, ſhall alſo uſually weare the like apparell as is aforeſaid, except tippets only. Wee doe further in like manner ordaine, that all the ſaid eccleſiaſticall perſons above-mentioned ſhall uſually weare in their journies, cloakes with ſleeves, commonly called prieſts cloakes, without gards, welts, long buttons or cuts. And no eccleſiaſticall perſon ſhall weare any coife or wrought night-cap, but only plaine night caps of blacke ſilke, ſatten or velvet.'

Vice-chanceller interrupts again. Here the vice-chanceller interrupted Mr. Frend again. What is all this to the purpoſe, it cannot do you any good. Certainly not, certainly not, Mr. Vice-chanceller, replied Mr. Frend, and continued reading*.

* Mr. Frend was very well perſuaded from his knowledge of the vice-chanceller, that nothing but a thunderſtorm could have done him any good: but he read this canon to ſhew the folly of enforcing an old ſtatute, when one of ſo much later date was ſo openly violated with impunity in the univerſity.

In

'In all which particulars concerning the apparell here preſcribed, our meaning is not to attribute any holineſſe or ſpeciall worthineſſe to the ſaid garments, but for decencie, gravitie and order, as is before ſpecified. In private houſes and in their ſtudies the ſayd perſons eccleſiaſticall may uſe any comely and ſchollerlike apparell. Provided that it bee not cut or prickt, and that in publike they goe not in their doublet and hoſe without coats or caſſocks, and alſo that they weare not any light coloured ſtockings. Likewiſe poore beneficed men and curates (not being able to provide themſelves long gownes) may goe in ſhort gownes of the faſhion aforeſayd.'

Promoter's dreſs. Such, Sir, is the law of the church with reſpect to dreſs, how well it is obſerved by the promoter is too apparent. So far from obeying it, is he not frequently on horſeback in contempt of all eccleſiaſtical diſcipline, without the prieſts cloak to cover his nakedneſs: nay, have we not ſeen him here expoſing himſelf in defiance of all decency, in his doublet and hoſe? Are the ſub-promoters more attentive to their prieſtly apparell? At this very moment I diſcover among them the indecorous phænomenon of white ſtockings!* If, Sir, the promoter can thus deſpiſe the laws of the church, it is no wonder that he ſhould be fearful of any mention of eccleſiaſtical dreſs: but his conduct deſerves the ſevereſt reprehenſion, and he, who could undertake ſuch a cauſe, muſt be held up as a fit object for deriſion and ridicule.

Promoter's charge falſe. I do maintain, Sir, that the charge of the promoter is falſe. I have never aſſerted, nor did it ever enter into my mind to aſſert, that eccleſiaſtical courts and eccleſiaſtical ranks and titles are

* Mr. Manſell, the new diſciplinarian, was as uſual in light-coloured fuſtians and white ſtockings.

all repugnant to the ſpirit of chriſtianity. There are ſome ranks, titles and courts repugnant, and others not repugnant to the ſpirit of chriſtianity. The court of inquiſition, for inſtance, is in my opinion of the former ſort, wicked and deteſtable, and all eccleſiaſtical courts formed on the ſame principles, deſerve the ſame epithets. Courts, where the judge is determined to condemn, where he does not ſit to inveſtigate, but to harraſs the accuſed by every means he can poſſibly deviſe. Again there are ranks and titles repugnant to the ſpirit of chriſtianity: that of pope is of this nature, and every title or rank derived from him, by which he or his adherents claim a power over the people not authorized by the laws of the country, or the precepts of the chriſtian religion.

On the other hand there are ranks, titles and courts, by no means repugnant to the ſpirit of chriſtianity. Such for example, were the titles of epiſcopoi, preſbuteroi, diaconoi, of the early chriſtians; ſuch their courts for the correction of morals and the infliction, if neceſſary, of the puniſhment of excommunication.

Promoter's mode of quotation,

But, Sir, the authour of Peace and Union no where makes the general propoſition laid down by the promoter, who has taken an unwarrantable liberty in miſquoting and miſrepreſenting a paſſage. It is in the recollection of the court, that, when this article was read, the promoter aſſerted, that the words quoted by him were exactly the ſame as a ſentence in the book, excepting only an omiſſion and an inſertion. To be ſure it is perfectly juſtifiable to omit and inſert at pleaſure, but ſuch liberties, though they may ſuit the promoter's purpoſes, totally deſtroy the meaning of a writer. Sir, by the ſame mode of garbling and mutilating ſentences the ſacred ſcriptures might be quoted as containing the moſt horrid

Makes the bible atheiſtical.

horrid blaſphemies, and it would be eaſy to convict the bible of atheiſm. In one part we read this general propoſition, there is no god: it is poſitively affirmed that there is no god, but ſhall we reſt our faith upon this article? Shall we, like the promoter, indulge in omiſſions and forget a very material part of the verſe; it is the fool who uſes this language: the fool hath ſaid in his heart, there is no god?

Recommends a halter to himſelf.

Again we read in another part of our bible, that an eminent leader of a faction, having been over-ruled in the cabinet of a rebellious ſon, went home and hanged himſelf: and in another place it is ſaid, go thou and do likewiſe. Will the promoter be ſatisfied with ſcriptural authority? Shall I be authorized in giving him this advice: Achitophel went home and hanged himſelf: go thou and do likewiſe? The promoter will omit, inſert, derange, confound, to injure another man; but, when his own principles are brought home to himſelf, and ſupported too with ſcriptural authority, he keeps his place with the utmoſt tranquillity.

Vice-chanceller interrupts.

Here the vice-chanceller interpoſed. I do not ſee how this applies to your caſe.

Meaning of the paſſage reſtored.

It applies, Sir, thus; it proves that the danger and injuſtice of quoting authorities imperfectly and detaching paſſages from the context of any writing is ſuch, that by theſe means any authour may be repreſented as aſſerting things totally different from and abſolutely contrary to his expreſs and plain meaning. In the inſtance now before you the promoter, by leaving out the word, 'Hence' and inſerting the word 'are,' has converted into a general and abſolute aſſertion, what is only true when reſtrained to the conditions of the preceding paragraph. Hence, ſays the

authour, hence, namely as it is ſaid in the preceding paragraph, from the people being prevented from interfering in eccleſiaſtical concerns, are derived thoſe courts, ranks, and titles, which are all repugnant to the ſpirit of chriſtianity. And when did this firſt take place? when the love of pre-eminence began to bear ſway over the minds of the clergy, that is, as it is ſaid in page 36, fourteen hundred years ago. From that time, from the council of Nice, the great body of chriſtians has been under this deluſion; the clergy in the greater part of the world think themſelves ſuperiour to the people, arrogate to themſelves unbounded power, ſeparate themſelves from the laity, and bind themſelves by vows to obey a foreign prelate. This is univerſally true of the catholick world, but it is certainly not true in the whole or in part in all proteſtant countries. I muſt therefore conclude this article by obſerving, that the promoter, in his uſual way, has miſquoted the authour of Peace and Union, and laid to my charge the maintaining of a general propoſition concerning courts, ranks and titles, which I utterly diſavow: and by acting in this manner he has given me another opportunity of ſhewing, that his charges againſt me are falſe, wicked, and malicious. I beg that the ſixth article may be read.

Here the ſixth article was read.

'6th Article. We article and object to you the aforeſaid William Frend, That you have profanely reviled and ridiculed the moſt ſacred offices of religion, as enjoined by the church of England, and performed by its miniſters, in the following paſſage contained in the thirty-ninth and fortieth pages of the aforeſaid book or pamphlet, (that is to ſay) 'The laity, like brute beaſts, ſit tamely under this uſurpation: a man, if a prieſt or miniſter enters, is not maſter of his own houſe; he muſt not thank God for the bleſſings of providence at his own table;

table; he cannot pledge his faith to a lovely woman without the interference of the prieſt; his offspring muſt be ſprinkled by ſacred hands, and at death he is not committed to his long home without another incantation.

'Theſe ſuperſtitious prejudices are, without doubt, highly beneficial to the intereſt of the clerical community; but the morals of neither party are conſulted. The laity are apt to imagine that there are ſome practices in which they may be indulged without any imputation on their chriſtian character; and the gentleman in black is ſuppoſed to put on a particular ſet of features and behaviour with his clothes:' and we article as above.'

An accuſation without ſupport.

In this article I am accuſed of having profanely reviled and ridiculed the moſt ſacred offices of the church, and from the peculiar emphaſis with which the promoter repeated from the pamphlet the paſſage on which this charge was founded, it was eaſy to ſee that here lay the chief ſtrength of the accuſation; and it was naturally to be expected that he ſhould ſupport this aſſertion with a clearneſs and force of argument proportioned to the ſtreſs which he laid upon it. But, behold, inſtead of proving or attempting to prove a ſingle ſyllable in the article, he fairly deſerted the point, and left to the court to make out what he felt it impoſſible to prove. Thus were my judges converted into accuſers, and I was left without knowing in what manner or to what I ſhould reply.

The promoter dreams.

I might indeed imitate his ſilence from the full perſuaſion, that a reader of the book would find it difficult to diſcover, on what principle the promoter has grounded his aſſertion. Surely it became him to ſhew, what were thoſe offices of the church which he called not barely ſacred, but moſt ſacred, and which I

am

am repreſented as having profanely reviled and ridiculed. For my own part I never heard, that there was an office preſcribing the mode of thanking god for the bleſſings of providence at table; and I never read one in the common book of prayer for ſprinkling a man's offſpring by ſacred hands: and, as the promoter has not choſen to ſpecify any office, we may ſafely conclude that he labours under ſome errour, and that he has dreamed of an attack on offices which exiſt only in his own imagination.

Rites of the church of England.

But as he has choſen to accuſe me of reviling ſacred offices, it is incumbent on me to conſider two things, the rites themſelves, and the perſons by whom the rites are performed.

With reſpect to the rites of the church of England, I feel no difficulty in delivering my ſentiments upon them, from which it will evidently appear that I could not wiſh to revile them. They ſeem to me in general very decent and ſolemn, fit to excite among the members of the church devotional ſentiments. The ſervices are drawn up in a ſtrain of piety, which would do credit to any church, and however exceptionable ſome offices may appear to the moſt eminent among the dignified clergy, they do not deſerve to be reviled or to be treated with ridicule.

Clergymen not uſurpers.

In conſidering the pre-eminence aſſumed by prieſts as a body above the laity, the authour of Peace and Union has properly called it an uſurpation: But do the miniſters of the engliſh church uſurp an authority over the laity? They perform offices as miniſters of the ſtate, as ſervants to the country. They are appointed to their poſts like other civil officers, acknowledge themſelves obedient in all things to the firſt magiſtrate, are not a ſeparate order

from

from the people, but perform ſervices only as they are enacted by parliament. Is not this, Sir, the language of the pamphlet? and is it not extraordinary that a writer ſhould be charged with imputing that to the church of England, which he had expreſsly denied to belong to it?

Rites of the church of Rome.

The contrary of all this is true in the church of Rome, whoſe rites ſeem more like heatheniſh incantations than the decent ſervices of a chriſtian community. Let any one compare together the ceremonies uſed in the romiſh church at a marriage or a burial with the correſponding ones in the church of England, and he will not heſitate to uſe the language of the authour of Peace and Union with reſpect to the former, which he would think totally inapplicable to the latter. But the promoter is unfortunately unacquainted with the rites of any church except his own; and, as he ſaw an alluſion was made in the engliſh language to matrimony and burial, he concluded that the writer muſt neceſſarily allude to the ceremonies of his own church; not conſidering that other countries uſe certain ceremonies on thoſe occaſions, and that the deſcription of them, if applied to his own church, would appear very erroneous, if not ridiculous.

Popiſh prieſts uſurpers.

Again, the perſons who perform theſe offices in the romiſh church do uſurp an authority over the people, and the laity, like brute beaſts, do ſit tamely under this uſurpation. They keep themſelves apart from the people, and countenance a variety of prejudices by way of encreaſing their ſpiritual domination.

Prejudice in favour of a clergy ſuperſtitious.

Theſe ſuperſtitious prejudices, the writer of 'Peace and Union' ſays, very properly, are beneficial to the intereſts of the clerical community,

munity, and it is right to obſerve that, though all preju-dice is hurtful, ſome are more ſo than others, and deſerve particularly to be called ſuperſtitious. The prejudice for example in favour of a clergy is ſuperſtitious, if founded on ſome miſtaken notions of a ſeparate order being ſpoken of in the new teſtament as more ſacred than the reſt: if the prieſts are conceived to approach nearer to the divinity, to have a peculiar character of ſanctity, and to be entitled to a particular kind of reverence, not owing to merit or ability, but to ſome gifts beſtowed on them on their entrance into the order. The reſpect paid to miniſters in a proteſtant community ought to be of a different nature. In England they are conſidered as employed in certain duties by the ſtate, and according to their behaviour in the performance of thoſe duties, they will be reſpected or neglected.

Rites of the church not reviled,

There are no rites, Sir, of the church of England reviled in this paſſage, nor does the writer ſeem to have any objection to the performance of them by its miniſters. The ſame line muſt be drawn in this as in the laſt article: the whole evidently belongs to the great body of chriſtians which has for fourteen hundred years ſwerved very widely from the truth of chriſtianity.

Nor proteſtant miniſters.

That the authour could not mean to involve in one common cenſure the miniſters of proteſtant churches, appears from his words in pages twenty-eight and forty-one. In the former he recommends a proviſion to be made for the clergy, and that the profeſſion ſhould poſſeſs ſuch emoluments, as may render it a proper purſuit for men of liberal education. In the latter he declares, that, from the profeſſion of a teacher of chriſtianity, reſpect ought not to be withheld. This, Sir, would not be ſaid by one who wiſhed to revile the rites or the members of any church, and the

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miſapprehenſion of the learned promoter aroſe ſolely from his unwearied employment in other purſuits, and his total ignorance of every thing relating to theology and church hiſtory.

Having thus, Sir, made ſome general remarks on the four articles in which I am accuſed of impugning religion as eſtabliſhed by publick authority, I ſhall now read to you my anſwer to each charge in particular, as it is drawn up for the future inſpection of the court.

Here Mr. Frend read the following paper:

ANSWER to ARTICLE the THIRD.

No defamation in calling the liturgy imperfect;

THE liturgy of the church of England, being confeſſedly an uninſpired compoſition, it will appear to many not ſcandalous, to ſay, that it muſt be imperfect; 'nor is it a crime in any one to point out its blemiſhes in order to its amendment.' Having been at firſt diſtributed into diſtinct and ſeparate ſervices, it will appear to many no diſparagement to ſay, that it muſt have ſuffered conſiderably with reſpect to its original arrangement, by the combination of theſe ſeveral ſervices into one. Having moreover been ſet forth at a time, when the engliſh language was comparatively rude, it will appear to many no profanation to ſuppoſe, that both in meaning, and ſtile, it may correſpond but little with our conceptions; that in fact inſtances do occur, in which words are uſed in a ſenſe very different from the popular meaning annexed to them, and that in ſome prayers, as Mr. Archdeacon Paley expreſſes himſelf, 'the ſtile is ill according with that annihilation of human greatneſs, of which every act that carries the mind to God preſents the idea.' Having, laſtly, been compoſed by perſons, whoſe religious opinions upon ſome

important articles, eſpecially thoſe of the quinquarticular controverſy, were not exactly the ſame with thoſe maintained by the body of the engliſh clergy, for above the century laſt paſt, many may think it no defamation o ſay, that in reſpect to doctrine, it is very far from that ſtandard of purity, which is required in ſuch compoſitions.

Archbiſhops have thought it imperfect.

Such perſons would juſtify themſelves by the authority of the brighteſt luminaries of the engliſh church: by that of archbiſhop Tillotſon, who wiſhed the church fairly rid of the athanaſian creed; by that of archbiſhop Sancroft, who declared, that he was ſo little ſatisfied with the burial office, that, for that very reaſon, he had never taken a cure of ſouls; by the authority of doctours Bennet and Stebbing, whoſe opinions on the burials of the dead, and the viſitation of the ſick, are well known; by the authority, laſtly, of Dr. Porteus, the preſent biſhop of London, Dr. Yorke, the preſent biſhop of Ely, archdeacon Paley, and a numerous body of reſpectable clergymen, who, either by their publications, or their ſignatures, have declared, that the liturgy is ſuſceptible, and ſtands in need of improvement.

How defamed by the authour.

But the charge objected to me is that of defaming the publick liturgy of the eſtabliſhed church. I aſk the promoter how? the anſwer I receive from him is, by affirming, that it is very far from the ſtandard of purity in doctrine, which is required in ſuch compoſitions. But, has the authour any where aſſerted this, or this only? Is it not ſaid in the pamphlet, that the liturgy of the church of England is very far from that ſtandard of purity in its arrangement, language, or doctrine, and not in its doctrines only? Is it the ſame thing to aſſert, that a liturgy, or any other compoſition conſidered in three reſpects, is far from the

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ſtandard of purity, as to ſay, that it is very far from that ſtandard in one only: that can only be true, on the ſuppoſition, that a fault in either of the other reſpects is impoſſible.

Promoter's reaſoning. To prove the contrary, the promoter muſt argue in the following manner: The liturgy of the church of England you affirm to be very far from the ſtandard of purity in arrangement, language, or doctrine, which is required in ſuch compoſition. But, with reſpect to its arrangement and language, there is no deviation from that ſtandard; therefore, you are rightly charged, with affirming that it is very far from that ſtandard in point of doctrine. But, without having recourſe to particular inſtances, can the promoter ſupport the minour propoſition, without denying the liturgy to be of human original? Having indulged himſelf with a fling at his orthodox brethren, by treating in his late prolegomena their opinion of the inſpiration of the evangeliſts, as a vulgar errour, does he mean to atone for it, by maintaining the inſpiration of the compilers of the liturgy? But further to eſtabliſh the truth of the diſtinction, on the ground of which I build my defence, I beg leave to illuſtrate it by two ſuppoſitions.

Proved falſe in two inſtances. Suppoſe firſt, that a perſon, ſpeaking of the vice-chanceller, or any other publick magiſtrate, ſhould ſay, that his conduct had been very faulty, in taking notice of ſome offences, too little or too much of others, could be charged with ſaying, that the vice-chanceller had been very faulty, in taking too much notice of ſome offences, till it had been proved, that he had been no ways faulty, in taking no notice, or too little, of others. The promoter has lately publiſhed, under the patronage of the univerſity, a tranſcript of the manuſcript copy of the four goſpels, and acts of the apoſtles, with a preface contrary to the advice of a learned mem-

ber of this univerſity. Now, ſhould I affirm of this preface, that it is very faulty with reſpect to the words employed, the ſenſe in which they are uſed, or their arrangement, could I be charged with affirming, that it was very faulty in the latter inſtance, unleſs no faults could be, or had been produced in the two former? It is as unneceſſary for me to produce any ſuch inſtances, as it was to produce any in the former caſe, in which the vice-chanceller had taken no notice, or too little, of any offences; but, if I could bring myſelf to cite and examine words and phraſes, with as little delicacy, as the promoter has cited and examined witneſſes, I ſhould not deſpair of equal ſucceſs.

His charge a direct falſehood.

I have thus ſhewn, to the full ſatisfaction of every one here preſent, that this charge againſt me is founded on a direct falſehood, and that it derives its whole appearance of truth from an artifice, that would diſgrace an accuſer in the moſt ordinary courts of juſtice. What effect it ought to have upon the character of a doctour in divinity, accuſing before the univerſity, I leave to the determination of the court.

ANSWER to ARTICLE the FOURTH.

The term idolatrous not in the book.

THE fourth charge, exhibited againſt me, is that of calling the worſhip of the church of England idolatrous: but this can only be added for the ſake of multiplying articles, and of introducing an odious term. For, if the promoter could have proved me guilty of calling the liturgy idolatrous, would he have thought it worth his while, to accuſe me of ſaying, and that too by a plain perverſion of my meaning, that it was very far from the ſtandard of purity in doctrine? No! no more than any other promoter, eccleſiaſtical or civil, would aim at proving one guilty of ſome

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ſmall offence, whom he was ſure of convicting of the greateſt. The proof of this charge is, that the church of England is included, in what is ſaid of the great body of chriſtians in the romiſh church, as appears by the context, to the promoter at leaſt, who wiſhes to be thought very quick-ſighted in the diſcovery of hereſy and hereticks. Be it ſo; and is the worſhip of thoſe churches called idolatrous? No! not expreſſly; How then can that of the church of England be ſo called, even though it were included in the ſame language?

Promoter's abſurd diviſion of chriſtians.

But the promoter, by a very unaccountable miſapprehenſion, unleſs it may be imputed to a deſire of finding fault, ſuppoſes me not to ſpeak of four different parties of chriſtians, namely, unitarian believers, diſſenters from the eſtabliſhed church, and the members of the churches of England and Rome; but of the three former only, and by the great body of chriſtians, are meant the members of the church of England and engliſh diſſenters. But who, that is acquainted with the preſent ſtate of chriſtianity, could think of calling thoſe two parties, the great body of chriſtians; or, on that ſuppoſition, what can be meant by the reference to the church of Rome in the ſame page; or to the admonition given to churchmen and diſſenters, at the concluſion of the paragraph quoted in the charge? 'Let churchmen and diſſenters examine ſeriouſly, how far they have deviated from the true faith, and as they reject many points, eſtabliſhed by the councils of the romiſh church, let them expunge every thing, which, ſavouring of its leaven, is to be found in preſbyterian ſynods, or epiſcopal convocations.'

Idolatry a term improperly uſed.

To ſpeak the truth, the charge of idolatry has been too frequently brought by one body of chriſtians againſt another; all proteſtants have united in charging the church of Rome with it; and

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ſome diſſenters have brought the ſame charge againſt the church of England. For my own part, though what has been ſaid is ſufficient to refute the charge, I muſt here declare, that I have frequently expreſſed, and do now expreſs a diſapprobation of this language, uſed towards the church of England. I ſpeak this with greater confidence, as, on a conference, in which my opinion was aſked with reſpect to the uſe of this term, as applied to the church of England, I expreſſed, as I do now, my entire diſapprobation of it, and declared my name muſt be withdrawn from the ſociety, of which I was then a member, if that term were permitted to remain in the declaration of the ſentiments of the ſociety.

Promoter guilty of falſehood.

The promoter, therefore, is guilty of a falſehood, in aſſerting that the church of England is called idolatrous in the pamphlet in queſtion: and of a wicked calumny, in objecting to me an opinion, which I utterly diſavow.

Promoter's incapacity.

His aſſertion, that by the great body of chriſtians were meant the members of the church of England and the diſſenters, is another proof of his inability to underſtand a plain ſentence in the engliſh language. By the great body of chriſtians, is evidently meant that body of men, which, for the laſt fourteen hundred years, has maintained, as is aſſerted in page thirty-ſix, opinions nearly ſubverſive of all true religion.

ANSWER to ARTICLE the FIFTH.

The charge a vile calumny.

TO aſſert that eccleſiaſtical courts, eccleſiaſtical ranks and titles, are all repugnant to the ſpirit of chriſtianity, is both abſurd, and contrary to ſeveral paſſages and expreſſions in the bible.

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The words ἐπισκοποι, πρεσβυτεροι, διακονοι, commonly tranſlated biſhops, prieſts, and deacons, are expreſſive of ranks and titles in apoſtolical churches; and St. Paul himſelf not only authorizes, but adviſes the ſentence of excommunication to be paſſed upon a delinquent in the church of Corinth. Therefore, ſince my accuſer declares me to have aſſerted, that eccleſiaſtical courts, eccleſiaſtical ranks and titles, are all repugnant to the ſpirit of chriſtianity, he declares me to have aſſerted a thing contrary to that ſcripture, which I have always profeſſed, and do profeſs, to make the ground of my belief and conduct; and this his declaration, unleſs ſubſtantiated by irrefragable arguments, can be conſidered only as a vile and malevolent calumny. Now ſo far from aſſerting, that eccleſiaſtical courts, eccleſiaſtical ranks and titles, are all repugnant to the ſpirit of chriſtianity, I do here profeſs and declare, that they are both conſonant with the ſpirit of chriſtianity, and were, and may ſtill be highly uſeful inſtitutions.

Promoter's unjuſtifiable conduct.

Does the authour of the pamphlet, ſay, that theſe courts, ranks and titles, are all repugnant to the ſpirit of chriſtianity? my accuſer has in quoting this paſſage taken more than one liberty, that is unjuſtifiable. In the firſt place, the word *are* is put in, by himſelf. The paſſage, as quoted by him without this word, is, 'eccleſiaſtical courts, eccleſiaſtical ranks and titles, all repugnant to the ſpirit of chriſtianity.' The accuſer juſtly conſidering within himſelf, that ſuch a paſſage would not ſuit his purpoſe, put in the word *are*; and a change is made, which cannot eſcape the notice of an unprejudiced obſerver. The inſertion of a word is not the only crime, of which this learned doctour is guilty. In the ſecond place, perceiving that the ſentence muſt, from the context, appear abſurd, unleſs the word *hence* were removed, he, by boldly ſtriking it out, deſtroyed the whole meaning of the paſſage. Thus, by

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theſe two changes, I am ſuppoſed to aſſert a thing totally contrary to my own principles.

Plain ſenſe of the paſſage.

The fact is, that by taking the paſſage as it is in the original, the ſenſe is plain, obvious, and correſponding with the paſſages preceding and ſucceeding. The clergy, i. e. of the great body of chriſtians above mentioned, are ſaid to affect a ſuperiority, and to prevent the interference of the people in eccleſiaſtical concerns. Hence, ſays the authour, hence, namely, from this affectation of ſuperiority, and from the deſtruction of the juſt rights of the people, have proceeded, at different times, and in different countries, courts like thoſe of the ſpaniſh inquiſition, and ranks and titles under the biſhop of Rome, all repugnant to the ſpirit of chriſtianity. The paſſage, as connected with the context, contains a plain and well-known truth; but my accuſer has made it contain an abſolute falſehood, by the omiſſion of one word, and the inſertion of another.

Defendant's opinion.

I do ſtill farther declare and avow it, as my deliberate opinion, that every church in this and all other countries, is juſtified in inſtituting any court, rank, or title, which it thinks expedient for the better regulation of its religious concerns: provided that it does not interfere with the rights of chriſtians, and acts according to the rule of the apoſtle, Let all things be done decently and in order.

I have thus far given myſelf the trouble of confuting the promoter's charge; but it was unneceſſary for me to do ſo, ſince the garbled manner in which the paſſage is produced, both from omiſſion and inſertion, have made void the whole of that article, and rendered it incapable of being ſubmitted to any judge either in law or equity.

ANSWER

ANSWER to ARTICLE the SIXTH.

No ſacred offices ſpecified.

IN this article, I am charged with profaning and ridiculing the moſt ſacred offices of religion, as enjoined by the church of England, and performed by its miniſters; and it is left to me to find out, what ſacred offices of the church of England are meant, and why they are called moſt ſacred. In the firſt ſentence of the paſſage quoted, it is ſaid, that the laity, like brute beaſts, ſit tamely under this uſurpation. Surely, to a man not blinded with prejudice and paſſion, this ſentence muſt haye been a clue to what follows. Are the laity of England like brute beaſts? Do they ſit tamely under clerical uſurpation? The authour of Peace and Union has expreſſly aſſerted the contrary in page twenty-five; and engliſhmen have certainly got rid of the folly which prevailed in this country three hundred years ago, and will not ſit tamely under the vile dominion of any prieſt.

Nor moſt ſacred alluded to.

But it may be ſaid, that, in the next paſſages, the moſt ſacred offices of the church of England are meant. Let any one read over the liturgy attentively, and point out one office there, relating, either to the thanking of God for the bleſſings of providence at table, or the ſprinkling of perſons by ſacred hands, and I will anſwer to the charge. There are two offices in it called matrimony and the burial of the dead, but theſe ſurely cannot be called the moſt ſacred offices; to which there may ſeem a reference in the words, he cannot pledge his faith to a lovely woman without the interference of a prieſt, and at death he is not committed to his long home without another ſpiritual incantation.

Authour well acquainted with the rites of the romiſh church.

On reading over the paſſage above-mentioned, I ſhould conclude at once, that the authour was well acquainted with the ceremonies of the romiſh church. He mentions the term ſprinkling with ſacred hands, and the burial of a perſon with another ſpiritual incantation. By uſing the word *another*, it is evident, that the authour had in his view an incantation, applicable to ſome one of the other ceremonies mentioned, and, before he is charged with an improper ſenſe in the uſe of that term, it is incumbent on the accuſer, to make himſelf well acquainted with the meaning of words, and to beware of appropriating a ſenſe to them which they evidently will not bear.

Meaning of incantation.

By incantation is neceſſarily meant ſome charm uttered by ſinging or chaunting, which was ſuppoſed to have influence over the devil or other evil ſpirits, or to uſe the words of Lord Chief Juſtice Coke (3 Inſt. p. 44.) as quoted by the Lady Margaret's profeſſour, an inchanter or incantatour is he or ſhe, qui carminibus aut cantilenis dæmonem adjurat; and from reading the liturgies of the church of Rome, and from obſerving many of its ſervices, I think myſelf juſtified in ſaying, that the word incantation is ſtrictly applicable to the church of Rome, and totally inapplicable to the church of England.

Where uſed.

Incantation is applicable to the form of words, accompanying the ſprinkling uſed in catholick countries, and this ceremony is performed in the following manner. The prieſt breathes over the water, and ſays firſt: Exſufflo te, immundiſſime ſpiritus, in nomine domini noſtri Jeſu Chriſti. He then uſes this exorciſm: Exorcizo te, creatura aquæ, in nomine Dei patris omnipotentis, et in nomine Jeſu Chriſti, filii ejus, et ſpiritus ſancti, ſi quod phantaſma, ſi qua virtus inimici, ſi qua

incurſio

ſneurſio diaboli, eradicare et effugare ab hac creatura aquæ, ut fiat fons aquæ ſalientis in vitam eternam. It will not be neceſſary to read the whole office, nor to deſcribe the various incantations uſed in the conſecration of holy water. Incantation is alſo applicable to the burial of the dead in thoſe countries, for with this inchanted water the dead body is repeatedly ſprinkled, as is evident from theſe words, taken from a catholick liturgy, in which every thing wears the aſpect of magick and necromancy, to uſe the language of Dr. Bentley, rather than of a chriſtian rite. Collocabunt corpus ſic indutum, vel ſuper menſam aliquam, vel in terra, loco decenti, ſuper aliquod ſtragulum aut tapete, et ad pedes caputve ſemper candelam accenſam habebunt: parva item aliqua crux ſuper pectus et inter manus defuncti ponatur, aut, ubi crux deſit, manus in modum crucis componantur. Sæpe etiam aſpergatur corpus aqua benedicta. In deſcribing the proceſſion to the houſe of the deceaſed, it is ordered to be made prælata cruce, et aſperſorio, cum aqua benedicta in vaſculo. The body of the deceaſed and bedchamber are to be ſprinkled. In the church ſacerdos accipit aſperſorium de manu miniſtri, et aſpergit corpus defuncti, diacono poſt eum incenſante. The ſprinklings, genuflexions, ſignings with a croſs, incenſe burnings, and various other ceremonies, accompanied the whole time with a particular kind of chant, are well known to any perſon, who has travelled, or made any enquiries into the religious rites of popiſh countries. The ſprinkling of the offspring, and the ſprinkling of the dead body is performed by a particular inſtrument, with which when in catholick countries, I have been repeatedly ſprinkled myſelf: it is called aſperſorium & aſpergillum.

No profanation or ridicule in the paſſage.

In the paſſage quoted, there is neither profanation nor ridicule: facts are plainly and clearly ſtated, which take place in by far the greater

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part of the chriſtian world. The laity in moſt places ſit tamely under the abominable and diſgraceful uſurpation of the vileſt men under the denomination of prieſts. Let the promoter travel through the greater part of Europe, all Aſia, and Africa, where there are chriſtians, and the greater part of America, and he may be a witneſs to every practice, mentioned in this obnoxious paſſage: but ſurely, it is unbecoming his character, unbecoming the office, he bears among us, to ſhew ſuch a total ignorance of the ſtate of chriſtianity in the world, as to ſuppoſe, that thoſe ſuperſtitious practices, which are known to belong to others, can be imputed to his own church, and which not only his own church expreſſly reprobates, but with which the accuſed perſon cannot be proved to have ever charged it.

Superſtitious prejudices to whom beneficial.

Theſe ſuperſtitious prejudices, it is ſaid, are without doubt highly beneficial to the intereſts of the clerical community. If this were the caſe in England, the promoter could eaſily find out the benefit derived, or ſuppoſed to be derived by the clergy, from theſe practices; but as he cannot do this, and on the other hand, the benefits derived from them by the popiſh clergy, are innumerable, he is convicted again, of giving a meaning to a paſſage, which it does not bear upon a fair conſtruction.

Whoſe morals are hurt.

The morals of neither party, it is ſaid, are conſulted; certainly they are not in the greater part of the chriſtian world: for, where the prieſts have the ſuperiority, luſt, ambition, paſſion, inordinate deſire, and every other vice, neceſſarily conſequent to the vows they have taken, and under which they are ſuppoſed to live, reign uncontrouled, and the people of both ſexes, by being kept in ignorance, and made ſubſervient to the views of the prieſts, grow callous to the impreſſions of virtue, and are notorious for a degradation of character.

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Wickliffe's opinion. The people, it is ſaid, think themſelves permitted to indulge in theſe vices. To prove this, it is neceſſary only to make enquiries from any perſons, who have travelled, and they will give ſufficient proofs, that the people do think themſelves authorized to live in the commiſſion of many vices, or at leaſt, from the facility of abſolution, make no ſcruple of living in the habitual indulgence of them. This is no new complaint; Wickliffe uſed to ſay above 400 years ago 'that he was not fond of applying the words, church and churchmen, merely to the clergy. As theſe often were men of bad lives, he thought ſuch an application, a vile proſtitution of thoſe ſacred names. Beſides, it had a bad influence, he thought, upon the laity: ſeeming to exclude them from Chriſt's church, and to give them a diſpenſation for licentious practices. If they were not of Chriſt's church, they were not under Chriſt's laws. He therefore would never have any idea fixed to the word *church*, but that of the whole body of chriſtians.'

Clergymen not more ſacred than officers of the army and navy.

The gentleman in black is ſuppoſed to put on a particular ſet of features with his cloathes. It would be endleſs to quote paſſages from ancient or modern authours, which deſcribe the ſtate of the clergy abroad: the vows, which they are under, neceſſarily place them in a different ſituation from other men, and from theſe vows, they are expected by the people, who know not the nature of our frame, to be ſo. I have read much on, and been eye witneſs to their conduct, but he muſt be loſt to all ſenſe of ſhame, who either compares, or declares, that I have compared the clergy of England, with thoſe on the continent, with a view of attributing to the former the vices and behaviour which belong to the latter. In England they are citizens, on the contrary abroad, they are not ſo; and it is properly obſerved in page 43, of the pamphlet in queſtion, that, could the clergy of France have

ſubmitted

ſubmitted to become citizens, they might ſtill have been in poſſeſſion of wealth and influence. For my own part I conſider, and am authorized by the canons of the church and by acts of parliament, in conſidering the clergy, like the army and navy, as a political body of men, of ſervants to the ſtate, whoſe head is the ſame as the head of the army and navy, the ſovereign of theſe realms. As their conduct with reſpect to the inſtruction of the people, and the conducting of the publick worſhip is regulated by the civil power, the body is political, not ſpiritual. And, if any one ſays here, that the clergy are not in this predicament, which is a very different one from that of the romiſh clergy, and ſhould act upon this opinion, by withdrawing them from the allegiance, due to the king, and impreſſing them with notions, that they are a body of men independant of the ſtate, I do not ſcruple to ſay, that he betrays his ignorance of our laws, and is an enemy to his country.

Promoter's miſtake. On the whole then, it does not appear, that any ſacred office, much leſs the moſt ſacred offices of the church of England, are profanely reviled, or ridiculed, or even alluded to. The promoter was not aware, that the paſſage in queſtion, as I have before hinted, is connected with what goes before in page 36. 'For theſe laſt fourteen hundred years, the world has been under the influence of two opinions, nearly ſubverſive of all true religion.' Under the ſecond opinion, namely, the love of pre-eminence, come the obſervations, that the promoter has made a part of his charge, forgetting, that the church of England is not 300 years old, that at the reformation the pre-eminence of the eccleſiaſtical ſtate was aboliſhed, that the church of England derives its exiſtence and authority from an act of parliament, and that its exiſtence and authority may in a moment be as eaſily taken away, as it was given, by an act of parliament.

Though

Defendant's opinion. Though this explanation is ſufficient to refute the abſurdity of the charge made againſt me, I think it neceſſary to give my own opinion of the ſacred or moſt ſacred offices of the church of England, as performed by its miniſters. They appear to me in general to be drawn up with a true devotional ſpirit, proper to impreſs the minds of the members of that church, with ſentiments of religion and piety *.

W. FREND.

8 Mr. Frend having finiſhed this ſummary, deſired that the eighth article might be read.

'8th Article. We article and object to you the aforeſaid William Frend, That by the laws and ſtatutes of this univerſity, particularly by the forty-fifth ſtatute, intitled, 'De Concionibus:' and by a decree paſſed in the ſenate of this univerſity, on the ninth day of June, one thouſand ſix hundred and three, it is ordained and provided, That all and every perſon or perſons impugning religion, as by law eſtabliſhed within this realm, or impugning eccleſiaſtical ranks and dignities, may and ought to be proceeded againſt, and puniſhed by ſuſpenſion from academical degrees, by expulſion or by baniſhment: and we article and object as above.'

Grace book called for. This article having been read, Mr. Frend requeſted that the grace of 1603 might be read, and on the printed ſtatute book being produced, Mr. Frend objected, and deſired that it might be read from the original grace book. The regiſtrary replied that it was not in court; it was in his office. Mr. Frend perſiſted in deſiring it to be produced. The vice-chan-

* This paper was afterwards delivered into the vice-chancellor's hands.

celler

celler on this, ſaid: I ſuppoſe, Mr. Frend, it is not very material, you do not wiſh to give the regiſtrary the trouble of going out of court for it. Mr. Frend replied: Sir, I muſt. I have reaſons why I conceive the production of the original very material. The office is not far off, and as I feel myſelf rather fatigued, this little delay will be ſome relief to me.

Grace not to be found.

Upon this the regiſtrary went out of court, and returned in about ten minutes with the original grace-book. Mr. Frend then deſired that the grace of 1603 might be read, and after ſome pauſe the vice-chanceller replied that it was not to be found. Mr. Frend roſe and ſpoke with ſome degree of warmth.

No, Sir, it is not to be found. The grace of 1603 is not in thoſe books. It is not in the place which could alone give it a ſtatutable exiſtence. This grace, on which ſo much has been ſaid, which is to be held out in terrorem to academicks, appears to be a non entity, a phantom. When brought to the teſt it vaniſhes into air.

Promoter loſt to all ſenſe of decency.

Surely, Sir, the promoter muſt be loſt to all ſenſe of decency, who could thus trifle with the court, and charge a man with a variety of crimes againſt a grace, which as a law exiſted only in his own imagination. Is not this an inſtance of the moſt ſcandalous effrontery? Not content with the ſtatute de concionibus, which cannot be brought forward in this court, he was reſolved to ſhew his ſkill and his malignity ſtill farther, by endeavouring to condemn me on a ſuppoſitious law. Is it not, Sir, unaccountable, that at the end of the eighteenth century a member of this univerſity, a doctour in divinity, could thus ſtand forward as a promoter in ſo nefarious a cauſe? It is now a hundred and ninety years ſince the grace is ſuppoſed to have

paſſed,

paſſed, and within that length of time not a ſingle perſon is to be found on record charged with a breach of it. Am I to be the firſt perſon to feel the effects of a grace, which, if it had ever paſſed, muſt be well known to have been the produce of troubleſome times full of bigotry, and religious infatuation? But it is needleſs to argue longer on this ſubject: the grace is not to be found, it has no legal exiſtence, it is not in the records of the univerſity, no proof can be brought of any one ſuffering under its penalties, it is ——— (here the vice-chanceller interrupted Mr. Frend by obſerving that, though it was not in the grace-book, it was in the vice-chanceller's book: on which Mr. Frend changed his diſcourſe, and addreſſed him thus):

Grace in the vice-chanceller's book.

I thank you, Mr. Vice-chanceller, for reminding me of a circumſtance which I might otherwiſe have forgotten. The grace is certainly in the vice-chanceller's book, and from thence it was copied into the book of ſtatutes. But, Sir, from its being in the vice-chanceller's book it does not follow that it is a grace of the univerſity. On the contrary there is full and ſufficient proof, that, at the time when this book was written, there was no proof of the legal exiſtence of the grace.

But without atteſtation.

Sir, it is uſual to atteſt that a copy of a grace agrees with the original. Of this you will find in the vice-chanceller's book frequent inſtances, and the regiſtrary of thoſe times naturally made uſe of the common formula. Under the grace you will find this atteſtation, concluding with the words, Ita teſtor. The regiſtrary had been copying the grace, it might be from ſome printed book, and not having any doubts of its authenticity wrote down the uſual words, Ita teſtor. Thus it remains, Ita teſtor. Ita teſtor! who teſtifies? The regiſtrary was too honeſt a man to put his

name down without an actual inſpection of the original: he ſearched for this original, and not finding it left the grace in the vice-chanceller's book in the preſent imperfect condition. There is indeed Ita teſtor, but no name or ſignature follows. As the grace could not be found in thoſe days—as it is not to be found at preſent—as there is no record whatever of any trial under it—as it is now a hundred and ninety years ſince it was paſſed—I am releaſed entirely from the neceſſity of giving it any farther conſideration. I cannot examine whether the ſuppoſed crimes of which I am accuſed, come under this ſuppoſed grace or not; but I muſt leave the court under this conviction, that no man but the preſent promoter could have ſo degraded himſelf in the eyes of the univerſity, and of all honeſt men, as to appear thus in a publick court, to enforce what at beſt would have been conſidered only as an obſolete ſtatute, and is now proved to be of no validity.

Heads of colleges defended.

Having thus, Sir, freed myſelf entirely from one part of this article, I may be expected to examine what can be urged againſt me under the ſtatute de concionibus; but I have already made my objections to the application of this ſtatute in the preſent court. I have proteſted againſt it as totally contrary to the forms of our law, and the privileges of the univerſity. The promoter, fearful that his tricks ſhould be found out, reſolved to ſecure me by a ſtatute, which differs materially from the grace: but I ſtand here, Sir, to be tried by the laws of the univerſity. I am not only to defend myſelf, but the rights of every member of the ſenate. I ſtand here to vindicate the authority of the heads of colleges, which this promoter is endeavouring to undermine. Yes, gentlemen, I will vindicate your authority. I contend, that no man can be tried in this court under the ſtatute de concionibus. It would be an inſult to you, to anſwer any charge here on this ſtatute. You, gentlemen,

tlemen, conjointly with the vice-chanceller, are in the proper place the judges of every offence committed againſt it. I ſhall always ſtand up for your legal authority, and will ſupport it, whilſt this promoter, loſt to all ſenſe of duty and decorum, inſults every one of you. He inſults every head of a houſe by this contemptuous mode of proceeding. Not content with treating the univerſity with the utmoſt contempt, he aims a blow at the power of its heads. By preſuming to interfere with the execution of this ſtatute, he reproaches you with neglect in matters, which are truſted ſolely to your vigilance: and, in purſuing his own ridiculous purpoſe, he has no regard for the exiſtence of laws, nor for the characters of thoſe perſons, in whom, by our ſtatutes, the execution of them is veſted. Gentlemen, if I am ever accuſed before you on matters, of which you have the ſtatutable cogniſance, I know how to ſubmit; but I am an engliſhman as well as a maſter of arts of this univerſity, and I do maintain, that every right of engliſhmen and academicks has been violated in this trial.

It is needleſs, Mr. Vice-chanceller, to proſecute this ſubject farther. I ſhall, in few words, read my anſwer to this article, to be hereafter ſubmitted to your peruſal.

Here Mr. Frend read the following paper:

Defence of this article unneceſſary.

I now flatter myſelf with having effectually demonſtrated, that the ſeveral charges brought againſt me, whether I am the authour of the pamphlet or not, are entirely without foundations that I have not impugned religion as eſtabliſhed in this kingdom, nor all eccleſiaſtical ranks and dignities; have not defamed the liturgy, ſtiled the publick worſhip idolatrous, nor profanely derided the moſt ſacred ſervices of the church. And here I might ſtop, as having no concern in what is farther objected to me by the promoter,

in the eighth article, in which he ſays, that by the laws and ſtatutes of this univerſity, particularly by the forty-fifth ſtatute, intitled, 'De concionibus:' and by a decree paſſed in the ſenate of this univerſity on the ninth day of June, one thouſand ſix hundred and three, it is ordained and provided, that all and every perſon or perſons impugning religion, as by law eſtabliſhed within this realm, or impugning eccleſiaſtical ranks and dignities, may and ought to be proceeded againſt, and puniſhed by ſuſpenſion from academical degrees, by expulſion, or by baniſhment.

Reaſons for the non-exiſtence of the grace.

But, for the ſake of ſhewing, that, though any or all of theſe charges ſhould be thought to remain in full force againſt me, I have not thereby incurred any penalty, the infliction of which is intruſted to this court, I ſhall offer ſome things on one of the laws ſpecified therein, namely, the decree paſſed in the ſenate of the univerſity, in the year 1603, reſerving what I have to ſay on the ſtatute de concionibus, till I am called by the vice-chanceller, and the greater part of the heads of colleges, errorem et temeritatem meam revocare, et publice confiteri; and diſmiſſing all other laws and ſtatutes, not particularly pointed out, with this general obſervation, de non apparentibus et non exiſtentibus eadem eſt ratio. The ſuppoſed decree of 1603, which is printed from a copy of the ſtatutes, formerly kept by the vice-chanceller, is not extant in the only authentick repoſitory of law, the regiſter of the univerſity. Nor is this to be imputed to neglect or accident; the reaſon of its not being found there, muſt be obvious to any intelligent perſon. It was never ordered to be inſerted there, as was, and is uſual in the caſe of ſtanding laws; the cuſtomary clauſe in thoſe caſes, ut hoc decretum veſtrum, vel hæc conceſſio veſtra pro ſtatuto habeatur, et in libris procuratorum inſcribatur, makes no part of it: from whence the inference is obvious, that the decree, objected

by

by the promoter, was merely a temporary reſolution, ſuited to the preſent emergency, and not intended to operate as a law in future. The ſame inference may be deduced from the omiſſion of the words, deinceps, or, in poſterum: it is ſaid, ſi quis oppugnaverit, not ſi quis oppugnaverit in poſterum; ſo that, ſuppoſing the form itſelf ever to have paſſed the ſenate, it was certainly never intended, ut pro ſtatuto in perpetuum habeatur; and, it is, I believe as certain, that it has never ſince derived an authority from any publick act of the univerſity. An attempt, therefore, to execute it at this time, muſt be as unreaſonable and unjuſt, as it would be thought, an hundred and fifty years hence, to enforce, what is called the alien bill, or that concerning traiterous correſpondance, when the occaſion of paſſing thoſe laws was become mere matter of hiſtory, and the relative ſituation of England and France entirely changed.

Such a grace could never have been enforced.

I am warranted in ſaying this, ſuppoſing the decree ever to have had an exiſtence, of which, I believe, the promoter has no farther evidence than that of a private authour half a century after the date of it. But would ſuch evidence be allowed in Weſtminſter Hall, in favour of any law, which was not to be found in the rolls of parliament, and of which there were no traces in the deciſions of the courts of law? I alledge yet farther, that if the decree were found in the proper place, and containing all the expreſſions neceſſary to ſhew, that, in the intention of thoſe who paſſed it, it was deſigned to operate as a law, perpetuis futuris temporibus, it muſt be conſidered as null and void, for want of power to execute ſuch intention. The ſubject matter of it does not come within the limit preſcribed in that clauſe of Queen Elizabeth's ſtatutes, under which alone, ſince theſe ſtatutes were given, the power of making additional laws is veſted in the ſenate. For, what connection is there between a decree de oppugnatoribus

eccleſiæ

ecclesiæ anglicanæ, and a power of making statutes ad eruditionis amplificationem, et decori atque honesti conservationem? But this is not all; it also istis statutis detrahit aut officit, as it gives to the vice-chanceller alone, a power of punishing those offences, the punishment of which is, by the statute, given to him and a majority of the heads jointly; and as it takes from every member of the university, the privilege of retracting or revoking his errours, by subjecting him ipso facto, to a suspension of his degrees.

The vice-chanceller agrees with the defendant.

In this part of my argument, I have the authority of the vice-chanceller himself, who, on a former day, asserted, that no grace or decree of the university ought to be allowed in this court, which was inconsistent with a publick statute. I take the liberty of adding, whether it makes for or against the power of the vice-chanceller, that of the other heads of houses, or the privilege of a private individual*.

W. FREND.

Mr. Frend, having read this paper, addressed the court.

Questions for the promoter.

Thus, Sir, I have endeavoured to refute the charges brought against me, but before I deliver the papers into your hands and submit them to a candid investigation, give me leave to address myself to the promoter. Though I have not taken any notice of the statute de concionibus, as he has mentioned the case of Mr. Charke, fellow of Peter-house, who in the year 1572 was under that statute deprived of his fellowship, and banished from the university, and it has been urged as a precedent for inflicting the same punishment upon me, I will take occasion from hence to ask the promoter, before we part, a few questions.

* This paper was afterwards delivered into the hands of the vice-chancellor.

Was

Was Mr. Charke cited into the vice-chancellor's court to anſwer for his conduct?

Who was the promoter of thoſe days?

Was any near relation or intimate friend cited to appear againſt him?

Were any private letters or converſation betrayed for that purpoſe?

Was any attempt made to eſtabliſh the charges by having recourſe to diſtant publications?

Were the minutes of the evidence taken for the information of the judges put into the hands of the promoter, before they paſſed into the hands of the judges?

In a word, had the univerſity the mortification of ſeeing a principal member, in the character of promoter, ſacrifice every virtuous feeling to bigotry or reſentment, to the hope of preferment or the love of perſecution?

The twenty-ſeven have no regard for truth.

While the promoter is ruminating on theſe queſtions, I will, Sir, detain the court only a few moments, in conſidering the nature of theſe proſecutions. I have been accuſed of impugning religion by aſſerting certain propoſitions, but, throughout the whole courſe of the proceedings, the promoter has never given himſelf the trouble to enquire a moment into their truth or falſehood. This he conſidered as of little importance. It was ſufficient for him and the twenty-ſeven, that an opinion was ſuppoſed to be advanced, which, whether true or falſe, contradicted a notion maintained two hundred years ago, and was therefore a proper object for academical animadverſion.

How

And have formed an improper opinion of the univerſity.

How diſgraceful, Sir, is ſuch a conduct! Theſe men miſconceive entirely the nature and character of this univerſity. We propoſe by our ſtudies to inveſtigate truth, it is our ambition to lay it open to the world: and ſhould any one of us in the courſe of his reading ſee reaſon to alter his former opinions, or ſhould he explore any latent truth, we will not on that account hold him up to publick cenſure. We applaud his reſearches, we approve of his zeal, we rectify our own notions by his diſcoveries, or if he errs his errour teaches us to guard againſt ſome fallacy, and paves the way for future enquiries. Had the univerſity been always of the ſame mind with the twenty-ſeven, in vain would a Locke have cultivated the powers of his mind: in vain would Newton have ſet aſide the theories of the ancient philoſophy. We muſt have been doomed to one beaten round of dry metaphyſicks, we muſt have plodded in the ſame dull courſe, and no one would have dared to follow the bent of his genius, leſt the diſcovery of truth ſhould baniſh him from the ſeats of literature.

No, Sir, let it not be ſuppoſed in the world that our character is degenerated, and that we are of ſuch baſe and ſervile minds, as to entertain a wiſh for the ſuppreſſion of liberal enquiry. We will continue to exhort each other to cultivate every noble ſcience: ſome may chuſe to explore with Newton the path into new worlds, others are inveſtigating the cauſes which retained the human mind ſo long in the mazes of heathen mythology, others, by comparing the ſyſtems of the antients with the diſcoveries of the moderns, may ſteer between the principles of Leibnitz and our immortal philoſopher, and build a theory, which erroneous as it may ſeem, does not want for advocates among the moſt intelligent mathematicians*. Why ſhould we ſtop theſe men in their career, and if they ſhould carry their attention to ſacred

* See the works of Boſcovich.

ſubjects

ſubjects or the art of government, are their endeavours to be derided or impeded? Are religion and politicks the only things ſo well underſtood, that no addition or improvement can be made to them?

Liberty of the preſs aſſerted.

I have been long, Sir, of opinion, that truth cannot ſuffer by the fulleſt diſcuſſion, and that every reſtraint on the liberty of the preſs, where no damage can be proved to have been done to an individual, is contrary to the intereſt of ſociety. Truth is on the ſide either of the majority of a nation, or the minority. If with the former there is nothing to be apprehended from the power of the opponents. In vain will they attack it. The cauſe of errour, weak in itſelf, will be rendered more feeble by every endeavour to raiſe its head, and it will be overcome, not by the ſtrength of party, but by the force of argument.

If the truth reſts with the minority, it is evidently for the intereſt of the other ſide, that every argument ſhould be brought forward. That majority muſt be corrupt and baſe which requires the ſuppreſſion of truth, when it ought, on the contrary, to hold forth every encouragement to free inquiry, by which it muſt be a gainer; for a tenacious adherence to its own erroneous opinions, in ſpite of reaſon or argument, muſt, by a continual and progreſſive ſtate of degradation, render it unfit for the moſt laudable purſuits, and ſink it at laſt in the depths of ignorance and vice.

In a well conſtituted government, no danger can poſſibly enſue from the publication of any ſentiments religious or political; and that ſtate of religion and government muſt be bad indeed, which can be overſet by a ſhilling pamphlet. As to trials of this ſort, I look on them as publick benefits; they may be compared to experiments in natural philoſophy, and ſerve to ſhew what progreſs the publick mind has made in the inveſtigation,

and how far it is prepared for the reception, of truth. In future times, it will be thought an extraordinary phænomenon, that in the eighteenth century, in a place dedicated to the purſuit of literature, a man ſhould have been thus ſummoned, thus tried, and thus perſecuted for the publication of opinions, which no one of his accuſers, attempted to refute.

Free inquiry, to whom injurious.

To ſum up the whole, Sir, in few words; free inquiry cannot be injurious, except to wicked and depraved minds. Society may be meliorated, but can never ſuffer by it: and if it ſhould be objected, that thus a door will be opened to the propagation of erroneous principles, let us ſtill recollect, that the errours of genius are momentary and pardonable; but how ſhall we hereafter diſpell that horrid gloom of intellectual darkneſs, which the promoter and his cabal are endeavouring to ſpread over this univerſity!

PROMOTER'S REPLY.

Dr. Kipling now roſe and obſerved, that when he conſidered the number of hours which had already been waſted on this trial, the precarious ſtate of the vice-chanceller's health, and the various duties annexed to his office, he felt the neceſſity of confining himſelf, in his reply, entirely to the merits of the cauſe. He inſiſted that, notwithſtanding every thing which Mr. Frend had ſaid, to repell the charge of defaming the miniſters and officers of the church of England, it muſt be obvious to every one, that the church of England muſt be the chief object of his attack. For to whom was the pamphlet addreſſed, but to the aſſociated bodies of republicans and anti-republicans in England, and where muſt thoſe abuſes exiſt which they are called upon to remedy? certainly not in the church of Rome, to which their exertions could not extend, but in the church of England, where only they could be ſuppoſed to have any effect. The reſt of

Mr.

Mr. Frend's defence was reducible, he ſaid, to the following points:

The charge of malice imputed to him and the other proſecuters.

The impropriety of enforcing an obſolete ſtatute.

The credibility of witneſſes which had been produced in court.

As to the malicious and perſecuting ſpirit with which he had been charged, Mr. Frend could not have forgot the opportunity which had been given him of making conceſſions, and averting the proſecution, if he had thought proper. Of this the promoter ſaid he was ready to give an account, if called upon. Mr. Frend here deſired him to do it. Dr. Kipling proceeded, and ſaid, that not many days after the fourth of March, when the firſt reſolutions relating to the proſecution had been agreed on at the vice-chanceller's, Mr. Marſh called upon him, and after expreſſing his concern for Mr. Frend, as a relation and friend, wiſhed to know if there was no way by which the proſecuters might be ſatisfied, without bringing matters to ſuch extremities as ſeemed to threaten him. He told Mr. Marſh, that in his private opinion, if Mr. Frend ſhould recant, and make a proper conceſſion, he would not be brought before the vice-chanceller. For his part, he aſſured Mr. Marſh, that he would then take no ſhare in the proſecution, and he believed no other perſon would. Mr. Marſh went, by his conſent, to Mr. Frend, who aſked him, if he was authorized to make any propoſals? and on his anſwering in the negative, Mr. Frend ſaid, as you are not authorized, I can ſay nothing.

The promoter then went to the next point, and ſaid, that as to the revival of laws which might ſeem to have

become obſolete, it did not follow, that a law, which had been long diſuſed, was therefore never to be enforced. There might be times when it would be more prudent to connive at their violation, than to proſecute the offence. On the other hand, the times might be ſuch as to demand every exertion, and to call on all the authority which the laws had given. The very times in which the pamphlet had been publiſhed were full of alarm, the preſs teemed with publications calculated to ſpread diſaffection and diſcontent over the whole kingdom: the attorney general had found it neceſſary to proceed againſt the offenders with more than common rigour; and if in this place we had ſuffered ſuch a daring attack upon the eſtabliſhment, to go unnoticed, we ſhould have proved ourſelves ungrateful to the beſt of ſovereigns *.

As to what Mr. Frend had objected to the depoſitions of Mr. Plampin, Mr. Kilvington, and Mr. Lloyd, it was not to be ſuppoſed, for a moment, that three perſons of liberal education, would knowingly perjure themſelves in that or any other court. Their junction with others in the proſecution did not give them ſuch an intereſt in the cauſe as to make them inadmiſſible. Every member of ſociety is in ſome degree intereſted in the proſecution of a publick offence: crimes of the moſt enormous nature might go unpuniſhed, if all perſons intereſted were precluded from giving evidence, and in caſes of murder, no witneſs at all could be admitted, all being concerned, and parties in bringing the guilt to light †.

The

* Why did not the promoter and his cabal, attack Mr. Frend for ſeveral other publications written expreſsly againſt the tenets of the eſtabliſhment? The great diſpute on the unity of god, in which he took ſo active a part, both by his writings, and diſcourſes from the univerſiry pulpit, did not, it ſeems, affect them: for what care they about the unity of god, or any other religious controverſy, unleſs the times are ſuch, that by oppoſing every effort to advance the truth, they may accelerate their own preferment?

† It appears from the proteſt, that Mr. Kilvington's evidence only was objected to on account of veracity; that of the other two,

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The preſent proſecution was of a publick nature: the defendant was not cited for any perſonal offence to him or any other of the proſecuters. He had offended the publick at large by his indecent reflections on the publick inſtitutions, he had called the ſolemnity of interment a ſpiritual incantation, he had charged the worſhip of the church with idolatry, and coupled the holy communion with a bacchanalian revel. The publick therefore was injured and inſulted, every man was intereſted in puniſhing the crime; and the three gentlemen who had borne teſtimony in the cauſe, ought no more to be rejected on account of partiality, than any other evidence who felt it a duty to ſtand forth and endeavour, as much as in him lay, to repreſs an evil of ſuch a dangerous nature. Under this impreſſion, the promoter ſaid, that he had acted to the beſt of his abilities, and concluded with a compliment to the vice-chanceller and the heads, for their patient attention during the whole of this long trial.

Mr. Frend roſe and obſerved, that as the promoter had been permitted to digreſs from the proper buſineſs of his reply to the relation of a fact which had not been before the court, he hoped that he might be allowed to make an obſervation alſo on the ſame ſubject. The vice-chanceller anſwered: To be ſure. Had I known what Dr. Kipling had been going to ſay, I ſhould have ſtopped him.

Mr. Frend then related the whole of the tranſaction with Mr. Marſh, appealing to a letter which Dr. Kipling had received from Mr. Marſh, and which he declared ſhould ſoon be in poſſeſſion of the publick; concluding the whole of this point with obſerving, that it was evi-

on different accounts: and the reader will keep in mind, that the objections are founded on the civil law, the law of the court, to which the promoter, and his partner, the vice-chanceller, ſeemed to have paid no attention.

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dent nothing conciliatory was ever intended: for if it had been, when they found it rejected by Mr. Frend merely as it ſhould ſeem for want of authority in the propoſer, this authority would have been given to Mr. Marſh, and the negotiation would have been reſumed. But no ſuch thing was done *.

As

* The copy of the letter which Mr. Marſh wrote to Dr. Kipling, on Monday the 6th of May, is in Mr. Frend's poſſeſſion, but as it is of conſiderable length, a part of it only, containing thoſe circumſtances, is here inſerted, which relate to the point in queſtion.

'I perfectly well remembered that I had called upon you about two months before, to inquire if no method could be deviſed of averting the evil which threatened Mr. Frend; that a converſation took place, the reſult of which was, that I ſhould go to Mr. Frend, and propoſe to him to make a conceſſion, in the hope of having the proſecution dropped; that my inſtructions were, to ſay, I had reaſon to believe that a conceſſion would produce the deſired effect, but that I was not authorized to affirm it; that I went in conſequence to Mr. Frend, that I made the propoſal agreeably to my inſtructions; that he refuſed to return an anſwer, on the ground of my not being authorized to make the propoſal, and that I again called at your houſe, to report what I had done.

'In anſwer to my requeſt that I might not be called into court, you ſaid, if it was not neceſſary, you ſhould not do it; but if Mr. Frend refuſed to acknowlege himſelf the author, and proofs of the authorſhip were wanting, you ſhould then be under a neceſſity of calling me. I replied, that as far as I underſtood the converſation which had paſſed in the evening, of my citation, the deſign of my evidence was merely to ſhew that a reconciliation had been propoſed, and that I knew of nothing in that tranſaction, which would prove Mr. Frend to be the author of the work which was publiſhed in his name. You then gave me to underſtand, that in procuring my evidence, you had very different views from what I had imagined, as appeared from your making the following anſwer: Don't you recollect, that, when you made the report to me of the converſation, which had taken place between yourſelf and Mr. Frend, you ſaid, among other things, that Mr. Frend uſed the following words: The members of the church of England have

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As to the promoter's maintaining that the eccleſiaſtical abuſes complained of in the pamphlet, muſt be ſuppoſed to belong to the church of England, becauſe the pamphlet is addreſſed to the aſſociated bodies in this kingdom, he will pleaſe to remember, that all the paragraph from which he quoted, is expreſsly ſaid, in the bottom of page 41. to be a digreſſion with which the parties addreſſed have nothing to do. The words are: 'The contending parties, whom we are addreſſing, will, however, conſider this as a digreſſion, and leave to others the care of directing the ſpiritual concerns and meliorating the religious opinions of mankind.'

leſs reaſon to be offended than the diſſenters, becauſe, in the parallel which I have drawn between them, the advantage is much in favour of the latter?

'To my reply that I did not recollect having reported from Mr. Frend, the words which you repeated, you diſcovered, Sir, very viſible marks not only of diſappointment, but of anger, and in a very haughty and imperious tone, a tone which our reſpective ſituations, I think, will not juſtify, you threatened me with all the danger of prevarication; you told me that I ſhould loſe my character, if I pretended to conceal what I knew to be fact; that I was not the only witneſs, who had been tampered with, in order to conceal evidence which ſhould be broughr to light, and then lifting up your arm with a menace, which (excuſe me, Sir, the expreſſion) at preſent appears to me ridiculous, you ſolemnly and violently declared, that you would not ſuffer ſuch proceedings'

Mr. Marſh, on the ſubject of tampering, remarks with proper warmth: 'I aſſure you, Sir, that unleſs the name of tampering be applied to the attempt, which you yourſelf have made to recall to my mind expreſſions, of which I have not the ſmalleſt recollection, as uſed in the manner which you declare, I know of no attempt, either direct or indirect, to which the term can be applied. With the charge that other witneſſes have been tampered with, I have no immediate concern: I can only ſay, that I know of nothing of the kind, and that I believe Mr. Frend is a man of too much honour, and too much courage, to ſtoop to ſuch a baſeneſs.'

With

With reſpect to the witneſſes, it was unneceſſary to add any thing to what had been ſtated in his objections to them, the grounds of which had not been removed by the promoter, as their inadmiſſibility depended on very different circumſtances—on laws with which it was evident he had not given himſelf the trouble to make himſelf acquainted.

Mr. Frend then gave into the hands of the vice-chancellor the papers, containing his anſwer to ſeveral charges which he had read in the courſe of his defence, with the requeſt that they might not be permitted to paſs into the hands of the promoter, or any other perſons, except the heads of colleges. The proteſt againſt the validity of the minutes of the evidence he then ſigned and delivered to the regiſtrary.

ACTA CURIÆ.

At a court holden on Tueſday, May 28th, between the hours of eleven and one.

THE vice-chancellor informed Mr. William Frend, that having fully and maturely weighed and conſidered the charges brought againſt him by Dr. Kipling, the evidence, and his defence, he was of opinion, that he the ſaid William Frend was proved to be the author and publiſher of a pamphlet, intitled Peace and Union, recommended to the aſſociated bodies of republicans and anti-republicans; and that by writing the aforeſaid pamphlet, and publiſhing it within the univerſity of Cambridge, he the ſaid William Frend, had offended againſt the latter part of the ſtatute de concionibus,

cionibus, beginning with the words, Prohibemus ne quiſquam, &c. &c.

Then the vice-chancellor, with the aſſent of the major part of the heads of colleges, as is required by the ſtatute, directed Mr. Frend to retract, and publickly confeſs his errour and temerity in the following manner.

'I William Frend, maſter of arts, and fellow of Jeſus college, in the univerſity of Cambridge, do acknowledge that, by writing a pamphlet, entitled Peace and Union, recommended to the aſſociated bodies of republicans and anti-republicans, and by publiſhing the ſame within the univerſity of Cambridge, I have offended againſt the latter part of the ſtatute de concionibus, as expreſſed in the following words:

'Prohibemus ne quiſquam in concione aliqua, in loco communi tractando, in lectionibus publicis, ſeu aliter publice infra univerſitatem noſtram quicquam doceat, tractet, vel defendat contra religionem ſeu ejuſdem aliquam partem in regno noſtro publica authoritate receptam et ſtabilitam, aut contra aliquem ſtatum authoritatem dignitatem ſeu gradum vel eccleſiaſticum vel civilem hujus noſtri regni vel Angliæ vel Hiberniæ.

'I do therefore, by the direction of the vice-chancellor, with the aſſent of the major part of the heads of colleges, retract, and publickly confeſs my errour and temerity, as the ſaid ſtatute requires.'

And the court was adjourned to Thurſday next, the 30th inſtant, at nine o'clock; and Mr. Frend was warned by the vice-chancellor then to appear, and to read the form above-written.

" The commiſſary began the buſineſs of this day by reading a part of the written defence which Mr. Frend

had delivered to the vice-chancellor on the preceding court day, and addreſſing himſelf to Mr. Frend, aſked him, whether he wiſhed to be heard upon the ſtatute de concionibus. Mr. Frend replied: certainly not. Upon this, the vice-chancellor declared Mr. Frend guilty of a breach of the ſtatute de concionibus, as is ſtated in the acta curiæ, prefacing his order to recant with the following reſolutions, which he read from a written paper."

Cambridge, Queen's college, May 27, 1793.

AT a meeting of the vice-chancellor, and the underwritten heads of colleges: It was unanimouſly agreed, that William Frend, maſter of arts, and fellow of Jeſus college, is proved to be the author and publiſher of the pamphlet, entitled Peace and Union, recommended to the aſſociated bodies of republicans and anti-republicans.

It was alſo unanimouſly agreed by the ſaid vice-chancellor and heads of colleges, that by writing the aforeſaid pamphlet, and publiſhing it within the univerſity of Cambridge, the ſaid William Frend has offended againſt the latter part of the ſtatute de concionibus, beginning with the words, Prohibemus ne quiſquam, etc.

It is alſo unanimouſly agreed by the ſaid vice-chancellor and heads of colleges, that the ſaid William Frend be directed by the vice-chancellor to retract, and publickly confeſs his error and temerity in the following manner *.

* Why were not theſe reſolutions inſerted with the recantation in the acta curiæ? Was the vice-chancellor conſcious that theſe reſolutions could only be made in a private meeting, and that the making of them would prove that he was acting in two different courts?

Here

"Here follows the recantation as above, and then the ſignatures."

Iſaac Milner, V. C.	J. Barker,
John Smith,	J. Turner,
R. Farmer,	Francis Barnes,
W. Colman,	W. Craven,
L. Yates,	T. Poſtlethwaite.

"A copy of the recantation, without any ſignatures, or reſolutions, was delivered to Mr. Frend, who inſiſted on ſeeing the paper ſigned by the heads, which was delivered to him. He then began to read and obſerve upon it ——the ſecond article of the charge has never been proved againſt me——by writing, I have offended againſt the ſtatute de concionibus——am required to retract my errour and temerity——What does that mean? The vice-chanceller interrupted Mr. Frend, who ſaid, I am reading only that I may underſtand it; and then proceeded in his remarks. The ſtatute requires me to retract my errour—that errour muſt be firſt pointed out. The vice-chanceller here again interrupted; and Mr. Frend was again proceeding in his remarks, when the vice-chanceller called out with much vehemence—order! order! the court muſt not be trifled with any longer!

"F. Sir, I muſt conſider whether I can ſubſcribe this or not.

"V. C. Mr. Frend, I will anſwer at once all you are going to ſay. If you wiſh for time to conſider it, I will adjourn the court: and I do accordingly adjourn this court till nine o'clock on Thurſday morning: and I warn you to appear, and to retract in the manner in which you have been directed. If you neglect to appear, or refuſe to retract, you muſt take the conſequences.

" Thus the court was adjourned; and Mr. Frend applied to the regiſtrary for a copy of the reſolutions agreed to by the vice-chanceller and heads of houſes; and on his ſaying, that he had them not, Mr. Frend made the ſame application to the vice-chanceller, who promiſed that he ſhould have them. In the afternoon a copy of the recantation was brought to Mr. Frend, without the reſolutions; on which he wrote a note to the regiſtrary, inſiſting on the vice-chanceller's promiſe, which was ſent by him to the vice-chanceller, and in a few hours a copy of the reſolutions found their way to Mr. Frend, from Queen's lodge."

ACTA CURIÆ.

At a court holden, &c. on the 30th day of May, 1793, between the hours of nine and eleven.

MR. Frend appeared, and the minutes of the laſt court were read. Mr. Frend refuſed to read the form which was preſented to him to read by the laſt court.

Mr. Frend delivered into court a paper, in bar of ſentence, beginning, " Whereas I William Frend am accuſed," and ending with the words " ſpiritus ſancti. Amen."

The vice-chancellor, with the aſſent of the major part of the heads of colleges, decreed ſentence of baniſhment againſt Mr. Frend in the following form:

" I Iſaac

I Iſaac Milner, D.D. vice-chancellor of the univerſity of Cambridge, do decree, declare, and pronounce, that William Frend, maſter of arts, and fellow of Jeſus college, having offended againſt the ſtatute de concionibus, by writing a pamphlet, Peace and Union, recommended to the aſſociated bodies of republicans and anti-republicans; and by publiſhing the ſame within the univerſity of Cambridge, and having refuſed to retract, and confeſs his error and temerity, in the manner preſcribed to him by me the vice-chancellor, with the aſſent of the major part of the heads of colleges, has incurred the penalty of the ſtatute, and that he is therefore baniſhed from this univerſity. (Signed)

Iſaac Milner, V. C.
John Smith,
R. Farmer,
W. Colman,
L. Yates,
J. Baker,
J. Turner,
Francis Barnes,
W. Craven,
T. Poſtlethwaite.

And the court was then diſſolved.

"The court having been proclaimed, and the proceedings of the laſt court day read, the vice-chanceller addreſſed Mr. Frend: You have conſidered, Mr. Frend, this matter, and have now had time to anſwer, whether you will or will not retract as directed by the court.

Mr. Frend, riſing with a paper in his hand, began to read:

"Mr. Vice-chanceller, the form, directed to be ſubſcribed by me, conſiſts of two parts, of an——

"V. C. Order! Mr. Frend, I have already heard you five hours in your defence, and would willingly have heard you for five hours more, if you had choſen to ſpeak upon the ſtatute de concionibus.

"F. Sir,

" F. Sir, it is not upon the ſtatute de concionibus, that I am going to ſpeak now, but——

" V. C. You muſt not read or ſpeak any thing now, but ſay, whether you will or will not ſign that recantation.

" Mr. Frend attempting again to read from the paper, the vice-chanceller again called out with vehemence—Order! Sir, Order! Order!

" F. Aye, Order! Mr. Vice-chanceller. I am for order; if you are a court of inquiſitours, you may ſilence me; but here I muſt be heard.

" V. C. You cannot; it is too late. If you do not read this form, we ſhall conſider it as a refuſal to retract, and proceed accordingly.

" F. This paper contains important matter. I aſk the opinion of the court upon it. If you will not allow me to read it, will you take it, Sir, and conſider it yourſelf?

" V. C. I will.

" Mr. Frend then delivered the following paper to the vice-chanceller:

" Mr. Vice-chanceller,

" The form directed to be ſubſcribed by me, conſiſts of two parts—of an acknowledgement that I have offended againſt the ſtatute de concionibus, and of a retraction, or publick confeſſion of my errour and temerity. The former appears to me unreaſonable, the latter is unintelligible. I chuſe to begin with the latter:—to retract, or publickly confeſs errour or temerity, muſt mean, to retract or publickly confeſs ſome erroneous and raſh poſition, or aſſertion, that has been advanced. But, where no poſition or aſſertion is ſtated to have been advanced, as in the preſent caſe, it can have no meaning at all. It is to

retract,

retract, or publickly confeſs nothing, or to make no retraction or confeſſion.

"The unreaſonableneſs of requiring me to acknowledge, that I have offended againſt the ſtatute de concionibus, conſiſts in this, that no charge whatever, of having offended againſt the ſtatute, has been brought during the whole courſe of the trial. I have indeed been charged with impugning religion, as by law eſtabliſhed, and with impugning all eccleſiaſtical ranks and dignities. The language of theſe charges is plainly borrowed from the decree, ſuppoſed to have been paſſed in the year 1603: ſi quis oppugnaverit doctrinam vel diſciplinam eccleſiæ anglicanæ, are the words of that decree. The language of the ſtatute, which muſt be deemed eſſential to any charge deſigned to be built upon it, is very different; it ſays, Prohibemus ne quiſquam publice infra univerſitatem noſtram quidquam doceat tractet vel defendat contra religionem in regno noſtro receptam et ſtabilitam, aut contra aliquem ſtatum, auctoritatem, dignitatem, vel gradum vel eccleſiaſticum vel civilem. Now, with which of theſe acts have I been charged? and they are the only ones, which the ſtatute makes criminal.

"In an act of parliament paſſed ſoon after the revolution, it is enacted, that if any perſon, having been educated in, or at any time having made publick profeſſion of the chriſtian religion, within this realm, ſhall, by writing, printing, teaching, or adviſed ſpeaking, deny any one of the perſons in the holy trinity to be god, he ſhall incurr certain penalties. But, would a charge of having impugned the doctrine of the trinity, though perhaps an offence againſt ſome other law, be deemed an offence againſt that particular ſtatute, if unaccompanied with any charge of having, either by writing, printing, teaching, or adviſed ſpeaking, denied that doctrine. If not, then, for the ſame reaſon, any charge, brought againſt me, of having offended againſt ſome other ſuppoſed law, cannot

be

be conſidered as a charge of having offended againſt the particular ſtatute de concionibus.

" The vice-chanceller having received the paper, and conſulted ſome time with the commiſſary and the heads, came forward, and ſaid, We all adhere to the form preſcribed, and think that there is nothing contained in the objection. You have been convicted of offending againſt the ſtatute: the ſtatute has left to the court to direct the form of recantation; this we have given you; and you muſt now only anſwer, whether you will or will not ſubmit.

" F. I expected that the errours which I am to recant would be pointed out.

" V. C. The errour is, that you have offended the ſtatute.

" F. I declare, upon the honour of a gentleman, and the credit of a ſcholar, that neither my friends, nor I, can underſtand the form.

" V. C. I will hear no more.

" F. Am I then to ſubſcribe this as my recantation?

" V. C. You are.

" F. Then I would ſooner cut off this hand than ſign the paper.

" Upon this the vice-chanceller and the heads employed themſelves in ſigning the ſentence, which had been prepared and brought into court; and Mr. Frend, after a minute's pauſe, addreſſed the vice-chanceller:

" May I deliver this paper into the court, in bar of ſentence?

" V. C. You cannot.

" F. Sir,

" F. Sir, I appeal to the commiſſary, whether in any court of juſtice a plea may not be offered in bar of ſentence?

" Com. Sentence is not yet pronounced.

" F. It is to prevent ſentence that I offer this plea.

" Having ſaid this, Mr. Frend laid his plea on the regiſtrary's table.

" Whereas I William Frend am accuſed of having offended againſt a ſtatute of the univerſity, by publiſhing a pamphlet, entitled Peace and Union, &c. and at the cloſe of the laſt term, the following form of general abſolution was pronounced by the vice-chanceller's deputy in a publick congregation: I do hereby plead that abſolution in bar of any further proceedings againſt me, on account of the ſaid publication.

" Abſolutio in fine termini.

"Auctoritate nobis commiſſa, nos abſolvimus vos ab omni levi negligentia, forisfactione, ſeu tranſgreſſione ſtatutorum privilegiorum et conſuetudinum, et deo et ſacramentis eccleſiæ vos reſtituimus in nomine dei patris et filii et ſpiritus ſancti. Amen.

" The heads having now reſumed their ſeats, Mr. Frend repeated the requeſt that his plea might be read.

" Vice-chanceller. It cannot.

" F. It muſt.

" Com. No paper has been yet received into the court.

" F. My requeſt is that it may be received.

" V. C. If you had any right, I would receive it.

" F. I have a right, and, as a member of this univer-

 ſity,

ſity, I inſiſt upon it. I do demand that it may be received and read.

" Upon this the vice-chanceller took the paper, and having ſlightly peruſed it, with the heads, threw it back again upon the table, and read from a written paper an addreſs to the audience, the ſubſtance of which is as follows."

VICE-CHANCELLER's SPEECH.

On his election into the office of vice-chanceller, Dr. Milner ſaid, that the ill ſtate of his health made him acquieſce in the determination of the univerſity with much diffidence and anxiety. He foreſaw that the remains of his health might be injured by the office, and his mind was agitated with this painful reflection: that the dignity of the office of vice-chanceller ſuffers, and the diſcipline and general intereſts of the univerſity are eſſentially injured through his incapacity.

He was in hopes, however, that the peace of the univerſity would not be diſturbed: little imagining that he ſhould be called upon to animadvert, not upon the raſh and intemperate ſallies of an inexperienced youth, but upon the premeditated and offenſive conduct of a gentleman, with whom, he ſaid, he had been long acquainted, and for whoſe talents and attainments he entertained the moſt ſincere reſpect.

As this event however had taken place, nothing remained for the vice-chanceller but to inveſtigate the nature of the offence, and the puniſhment aſſigned by the laws of the univerſity, and to explain them both in the moſt conſpicuous manner he was able.

On ſuch an occaſion, he obſerved, the ſituation of the judge of this court is not to be envied. The times are unfavourable

unfavourable to the enforcement of rigid diſcipline. Produce exiſting laws and you are told, that ſuch laws ought not to have been made; that they are a diſgrace to the country; that they are obſolete, and, perhaps, that you dare not enforce them. Others admit, with more temper and plauſibility, that offences like the preſent are highly blameable in themſelves, and that, if puniſhments were confined to ſuch groſs and indecent examples, there would be no room for complaint; but, when you have once begun to puniſh for the propagation of opinions, unfair advantages will be taken; not a ſyllable muſt then be uttered againſt what is eſtabliſhed: there is an end of the exerciſe of our faculties in a diſpaſſionate inveſtigation of truth. Then the parties cry out—perſecution!—tyranny over the conſcience!—no freedom of diſcuſſion!—And thus the clamours of the ignorant or diſaffected, are to be an anſwer to every ſober argument, that can be advanced in favour of the moſt ſacred and venerable inſtitutions to be found in the hiſtory of mankind.

As theſe clamours may have a tendency to draw away the ſoundeſt mind from the point in queſtion, the ſafeſt rule is, he obſerved, to pay not the leaſt regard either to thoſe who cry out tyranny and perſecution, or to thoſe who cry out hereſy and ſedition.

With theſe impreſſions he entered on this unpleaſant buſineſs, conceiving that, as a bold and indecent attack had been made upon the religious inſtitutions of the country, and the ſtatutes of the univerſity openly violated, the very exiſtence of the univerſity might ſoon be endangered.

It was true, he ſaid, that many caſes of libellous publications were much better treated with neglect and contempt. But the caſe of Mr. Frend was of a peculiar nature: He is a

perſon of conſiderable ſtanding in the univerſity, and we are all of us ready to bear teſtimony to his talents and attainments. He has been in the moſt important ſituation of a publick tutour of a college. He reſides a good deal among us, and by his zeal and perſeverance, is well qualified to make impreſſions on the unſuſpecting minds of youth. He is known to have objections to the eſtabliſhed doctrines of the church; and if his defamation of the ſolemn inſtitutions of our religion, and the publick functions of the clergy, went unpuniſhed, the under-graduates would ſoon inſult the doctrines and ceremonies of the church, believe them to be mere political contrivances, and conclude, that we, as well as others, being convinced that they are indefenſible by reaſon, are only induced to adhere to them from puſillanimity, or ſelf-intereſt.

Whilſt I was heſitating, (he continued,) whether, as vice-chanceller, I was not called upon ex officio to animadvert, in a ſummary way, on the authour of this pamphlet, I was releaſed from my doubts, by the applications of thirty-four members of the ſenate, moſt of them of diſtinguiſhed reputation, who, without the leaſt appearance of animoſity or reſentment, profeſſing alſo to be ſolely influenced by a deſire of maintaining the honour of the univerſity, requeſted the vice-chanceller to take cognizance of this offence.

Let us hear, therefore, no more of tyranny and perſecution on the one hand, nor of hereſy and ſedition on the other, but ſeriouſly and ſolemnly approach the cauſe itſelf.

A grievous charge is brought againſt Mr. Frend. I find myſelf bound to enforce the ſtatutes of the univerſity. I do not mean to inſinuate, in the ſlighteſt degree, that the 45th ſtatute is an unwholeſome or impolitick law:

law: I find it in exiſtence, and I am bound to execute it*. Dr. Kipling has pointed out particular ſtatutes, which he affirms to have been violated, and therefore, in caſe of conviction, the court has no option. The conviction depends on two circumſtances. Is Mr. Frend the authour and publiſher of the pamphlet? On this head we have not the leaſt embarraſſment; and Dr. Kipling has, we think, produced a great deal of ſuperfluous evidence†. Does the pamphlet contain matter by which the 45th ſtatute is violated? We are all convinced that it does; and the eloquence of Mr. Frend has not convinced us that the moſt offenſive paſſages do not apply to the church of England, as well as the church of Rome‡.

But ſuppoſing the court to have a diſcretionary power, what could induce them to exerciſe it? Were not the times, when the pamphlet appeared, moſt critical? Did the authour inculcate the neceſſity of peace and good order§? When the national convention of France had filled up the meaſure of their crimes, by murdering the king, and deſtroying all lawful government, and their deliberations breathed nothing but atheiſm and anarchy,

* Why does not the vice-chanceller obſerve and cauſe to be obſerved all the other ſtatutes which are in exiſtence, and which, upon his mode of reaſoning, he is equally bound to execute?

† Dr. Milner may have been convinced in his own mind, becauſe Mr. Frend went to him for an imprimatur, and ſhewed him the manuſcript of the work; but as a judge, he ought to determine only by the evidence in court: and how could Dr. Poſtlethwaite be ſatisfied, without hearing the evidence on this point?

‡ Surely Dr. Milner might have ſatisfied the audience on this ſubject, by giving ſome reaſons for this opinion.

§ Yes, and in every part of the pamphlet the neceſſity of it is implied.

did

did he inculcate a reſpect for the king and parliament of this country, and for the reformed religion, and the functions of the clergy as eſtabliſhed by law*? In a word, was it not his plain object to teach the degraded laity, that they were ſitting like brute beaſts under an uſurped authority †. In the title page, there ſtands in great letters, 'Peace and Union,' but my aſſeſſours, the heads of colleges, concurred with me in opinion, that the offenſive paſſages belonged to the church of England, as well as that of Rome.

Again, the authour, the vice-chanceller obſerved, had not ſhewn the ſlighteſt veſtige of contrition, and had miſtaken, in ſeveral ways, the proper mode of defence. He has not treated the cauſe with a ſufficient degree of ſerioufneſs, but expected to make an impreſſion on his judges by legal quibbles, ſtrokes of wit, and alluſions to novels. He might have avowed the authourſhip, and have ſaid, this I maintain to be true, that may poſſibly be defended, but here I wiſh I had ſtopped. He might have boldly confeſſed and defended his principles, and in a manly way have ſubmitted to the infliction of penalties, which, according to his judgment, were arbitrary and unreaſonable ‡.

The

* If Milner were to be ſeen often in a pulpit, we might aſk him, whether in every ſermon he followed this plan, and why was the authour to inculcate a reſpect for the eſtabliſhed religion, when he is well known to diſapprove of many points in it? But to hear Milner talk of religion, and the functions of the clergy, was ſuch a burleſque, or, to uſe his common phraſe, 'keeping up of the hum,' as was never before exhibited.

† So far from it, he tells the people of England, that the alliance betwen church and ſtate is a fiction, which could not be realized in this country, without ſubjecting the abetters of it to the penalties of treaſon, and that all our eccleſiaſtical laws depend on the authority of parliament.

‡ Quanto rectius hoc, quam triſti lædere verſu
Pantolabum ſcurram, Nomentanumve nepotem!
Cum ſibi quiſque timet quanquam eſt intactus et odit.

Mr. Frend

The court has been at a loſs to comprehend in what way the continued application of ſatirical remark on the character of Dr. Kipling, and on the reſt of the gentlemen who diſapproved of this publication, could be uſeful. Can he now ſay as the great roman did of old, Si nulla alia in re, modeſtia certe et temperando linguæ adoleſcens ſenem vicero! It was more than once inſinuated, that the promoter of this cauſe could neither read nor ſpeak a word of pure latin *. But ſuppoſing that the biſhop of Llandaff could permit the moſt important profeſſourſhip of the univerſity to be ſo ſcandalouſly degraded and neglected, as this imputation on Dr. Kipling implies †, or that calumny could fix itſelf on the characters

Mr. Frend does not now ſhew the ſlighteſt veſtige of contrition. He is well convinced that the vice-chanceller and his cabal wiſhed the cauſe to be treated in a more ſerious manner; but it is to be hoped that all perſecuters may, in future, be treated in the ſame manner. At the latter end of the eighteenth century, it would be ridiculous in the extreme, to give any kind of importance to a promoter, ſub-promoters, and familiars; they deſerve only to be treated with contempt and ridicule, and to be held up to the world as fit for nothing but to cringe baſely for preferment.

* For read he could nor evidence nor will,
Ne tell a written word, ne write a letter,
Ne make one tittle worſe, ne make one better:
Of ſuch deep learning little had he need,
Ne yet of latin, ne of greek, that breed
Doubts mongſt divines, and difference of texts,
From whence ariſe diverſity of ſects,
And hateful hereſies, of God abhor'd:
But this good ſir did follow the plain word,
Ne medled with their controverſies vain;
All his care was his ſervice well to ſain,
And to read homilies on holy days;
When that was done, he might attend his plays.

MOTHER HUBBERD'S TALE. l. 382.

† Many more beſides Mr. Frend, who entertain the greateſt reſpect for the biſhop of Llandaff, feel themſelves concerned for the honour

ters of Dr. Glynn and Profeſſour Mainwaring, of twelve tutours and lecturers, of thirty-four members of the ſenate, how would all this exculpate Mr. Frend? But not content with this, he has maintained that their evidence on oath ought to be rejected. Let us try the truth of this aſſertion by a poſſible ſuppoſition. Suppoſe the whole univerſity in a body had made this application, would any man ſay, that the evidence of every perſon in that body ſpeaking on oath, not to the merits of the pamphlet, but to a plain fact, is to be rejected? This would amount to no leſs an abſurdity, than that the very greatneſs of the crime might properly become its ſhelter and defence*.

honour of the univerſity, that he ſhould ſuffer the moſt important profeſſourſhip to be ſo degraded by his deputy. They lament, that the baldneſs of the promoter's latinity, the inſignificance of his queſtions, and his total ignorance of logick and theology, have rendered the divinity-ſchools contemptible.

* The vice-chanceller's ſuppoſition is an abſurd one, and does not in the leaſt invalidate Mr. Frend's objection. The objection is made by the defendant before the oath is given, and he cannot know for what purpoſe the witneſs is called. The queſtion is, whether, according to the civil law, one of the party concerned in the accuſation can be a witneſs, and it matters not whether the party conſiſts of twenty-ſeven, or all the members of the ſenate. But the vice-chanceller concealed another circumſtance: the act of the twenty-ſeven was infamous; they conſtituted themſelves an infamous cabal of ſpies and informers, and, had all the members of the ſenate joined them, the infamy of the action would have been ſtill greater, inaſmuch as the accuſed perſon's laſt reſource is an appeal to the ſenate itſelf. What chance would he have of juſtice, if his judges muſt be taken out of, and choſen by the body of accuſers? Leſs, if poſſible, than Mr. Frend's was, when it was well known, that in his caſe, the delegates were nominated by one of the heads who had ſigned his ſentence, and members were ſent for from all parts to vote, according to the expreſſion of a dignitary of the church, who came upon this errand, againſt Mr. Frend. Mr. Frend, in the mean time, did not interfere in the leaſt in this election.

The

The vice-chanceller now addreſſed the junior part of the univerſity. He would not, he ſaid, animadvert on the noiſy and tumultuous irregularities of conduct by which the proceedings on ſome of the former court days had been interrupted *. He informed them, that their paſſions and affections had been founded upon ſome vague ideas, that the accuſed perſon had been perſecuted. It was neceſſary to advertiſe them of their danger, when this country had juſt eſcaped an alarming criſis, and every attempt to puniſh libellous attacks on the conſtitution and government was called a ſpecies of perſecution, and contrary to the impreſcriptible rights of man. There could be no perſecution, where there was fair ground of accuſation, and the accuſed perſon had had a fair hearing. I feel myſelf authoriſed, ſaid he, to interrogate you cloſely, whether, being educated from the earlieſt infancy in the practice of frequenting the church, and reverencing her inſtitutions, you are now prepared to ſay, on reading the pamphlet, that the accuſation of impugning the church was either frivolous or oppreſſive. On the ſecond point, that the accuſed perſon has had a fair trial, I have no anxiety. I have no doubt that you will tell your fathers, your guardians, and your friends, that you never heard or read of a trial, where the accuſed perſon had a more full, deliberate, and impartial hearing †. You will tell them alſo, that the only doubt you could entertain of the propriety of the proceedings

* It is abſolutely falſe that the proceedings were ever interrupted; but men without large wigs have riſible muſcles.

† There never were ſeen greater inſtances of partiality in any trial. The objections of the defendant were conſtantly over-ruled without any reaſon aſſigned; whatever could make in his favour was always rejected; the accuſer called and recalled evidence, and put words in their mouth juſt as he pleaſed: and if the judge was obliged to let the defendant have a few hours in one day to himſelf, it is to be recollected, that the accuſer had employed five days in the accuſation.

might be, whether the judge of this court, through an extreme unwillingneſs to interrupt the accuſed perſon in his defence, did not carry his patience and forbearance to an almoſt unwarrantable length: that the univerſity of Cambridge will not ſuffer the ſacred and venerable inſtitutions of the church to be derided and inſulted, and that at a time, when a profane and licentious ſpirit of infidelity and irreligion makes rapid advances, and threatens the deſtruction of our eccleſiaſtical fabrick, there were to be found in theſe ſeminaries, reſpectable characters, who could accuſe with liberality and decorum, and judges who could condemn with firmneſs and moderation *.

The remaining part of my advice to you is ſhort but important. Beware of entering into religious controverſies, at this period of your lives. Whatever may be the profeſſion you are intended for, improve your underſtandings by the diligent purſuit of academical ſtudies: obey your tutours: frequent the ſervice of god according to the eſtabliſhed forms, both in your private colleges, and the univerſity church. At preſent, take it for granted, that our forefathers had ſome good reaſon for readily adhering to and ſupporting theſe venerable inſtitutions. Take it for granted, at preſent, I repeat it, and thoſe whom I perceive to object to theſe words will themſelves tell you, that it has not been my way to take things for granted †: but it is not your time to become parties in controverſial matters of religion.

* The moderation of the judge was evident, when he vociferated order! order! to prove the ſtrength of his lungs, and made more noiſe than the preſident of a bear garden.

† Not on philoſophical ſubjects: but has not Dr. Milner ſubſcribed the thirty-nine articles? and is there a man in the univerſity, who ſuppoſes that he ever gave himſelf the trouble of inveſtigating them? and would not he himſelf be offended with any one who ſhould aſſert that he believed them?

It

It is eaſy to guard againſt thoſe who openly attack your religious principles; but I have more apprehenſions from thoſe who are perpetually talking of candour, liberality of thinking for themſelves, and ſuch like topicks, very captivating to the unſuſpecting minds of youth.

Remember the earneſt advice of one, who addreſſes you thus, from the pureſt motives of good will, whoſe imagination and temper have never been heated with religious diſputes, whoſe pride and ambition have ever been to obtain, in the various branches of uſeful ſcience*, ſolid information for himſelf and others, and whoſe health has been almoſt exhauſted with academical labours; of one who addreſſes you, not with the authority of a vice-chanceller, but with the affection of an experienced academick; of a perſon who has never been ſuſpected of being fond of poſſeſſing offices or dignities †; who lamented that the neceſſity of this enquiry ſhould have taken place in the preſent year, but thought it his duty, when the enquiry was inſtituted, to go through it with energy, and found it impoſſible to acquit Mr. Frend of having offended againſt the ſtatute, without ſacrificing every principle of truth, juſtice, and honour.

The vice-chanceller then read the ſentence, and the court was diſſolved.

* Then Dr. Milner, preſident of Queen's college, and dean of Carliſle, does not ſuppoſe divinity to have any rank among the uſeful ſciences: we all believed this of him, but did not think that he would be ſo unguarded as to mention it in publick, and on ſuch an occaſion.

† Did he ever refuſe any one that he could get, or let go any one that he could keep? If it is ſaid that he wiſhed to decline the office of vice-chanceller, it is to be recollected, that he conſidered it as an onus, not an honour.

Thus ended the proceedings in the vice-chanceller's court. The day after, Mr. Frend waited on the vice-chanceller, to declare his intentions of appealing to the ſenate againſt the ſentence of the court; and on the following day, the proctor inhibited the vice-chanceller, in the uſual form, from putting his ſentence into execution. The mode of appeal and inhibition is ſtated by the regiſtrary in the following words:

Queen's College, June 1, 1793.

Buſineſs of Appeal between William Frend, M.A. and Thos. Kipling, D. D. } Before the right worſhipful Iſaac Milner, D. D. vice-chancellor of the univerſity of Cambridge.

On which day, at the hour of eleven in the forenoon, the ſaid William Frend appeared, and having, in the afternoon of yeſterday, declared to the vice-chancellor his intention of appealing from a certain definitive ſentence pronounced upon him by the ſaid Iſaac Milner, on the 30th of May laſt, did then and there take the oaths de gravamine and de non ſolicitando delegatos.

At the ſame place, day, and hour, George Hunter, M.A. junior proctor of the univerſity, appeared, and inhibited Iſaac Milner, D.D. vice-chancellor of the univerſity, during the appeal between William Frend, party appellant, and Thomas Kipling, party appellate, in the following words: "Ego Georgius Hunter, procurator alter, nomine academiæ te Iſaacum Milner, procancellarium, judicem a quo, inhibeo, ne quid, pendente appellatione inter Gulielmum Frend, et Thomam Kipling attentare vel innovare præſumas."

Me preſent.
GEO. BORLASE,
Not. Publ. and Regiſtr.

Buſineſs

Buſineſs of Appeal between William Frend, M.A. and Thos. Kipling, D. D. } Before the right worſhipful Iſaac Milner, D.D. vice-chancellor of the univerſity of Cambridge.

On which day, at the hour of twelve, Thomas Kipling, D.D. and John Beverley, M.A. his proctor, did appear, and did then and there reſpectively take the oath "de non ſolicitando delegatos," in a certain cauſe of appeal between William Frend, party appellant, and him the ſaid Thomas Kipling, party appellate.

In the preſence of me,

GEO. BORLASE,

Not. Publ. and Regiſtr.

PROCEEDINGS

IN THE COURT of DELEGATES.

FIRST COURT.

University of Cambridge. } Before the right honourable and right worſhipful William Wynne, knight, doctor of law, the worſhipful John Hey and John Barlow Seale, reſpectively doctors in divinity, and the worſhipful John Lane and Edward Chriſtian, reſpectively maſters of arts, judges delegates, in a certain cauſe of appeal, or complaint, between William Frend, M. A. and fellow of Jeſus college, party appellant, and Thomas Kipling, D.D. party appellate, in the law ſchools of the ſaid univerſity, on Friday the 28th day of June, 1793, at nine o'clock in the morning.

Me preſent.
GEO. BORLASE.
Not. Publ. and Regiſtr.

Buſineſs

Buſineſs of Appeal between William Frend, M.A. and Thos. Kipling, D.D.

The grace of the ſenate, 14th June, 1793, appointing delegates in this cauſe, was read. Alſo a citation of William Frend, party appellant, and a citation of Thomas Kipling, party appellate. And John Beverley, eſquire bedel, was ſworn, who depoſed, that he had reſpectively ſerved the ſaid citations on Mr. Frend and Dr. Kipling, who both appeared.

Alſo was read a paper ſigned Robert Tyrwhitt, purporting to be a proteſt againſt the legality of the aforeſaid grace. Mr. Tyrwhitt was heard in ſupport of the proteſt; and the judges delegates, after deliberating on the ſame, declared, that they were unanimouſly of opinion, that nothing contained in the proteſt ought to prevent their ſitting to hear this cauſe; and that they were ready to do ſo.

The regiſtrary being ſworn, depoſed, that he had looked over the minutes, ſince they were returned by the promoter of this cauſe, in the court below, and that they had not undergone any alteration while in the promoter's hands.

And the proceedings and evidence had and taken in the court below, were read as far as to the act of court 13th of May incluſively.

And the delegates adjourned the court to a quarter paſt four o'clock in the afternoon of this day.

GRACE

GRACE for the APPOINTMENT of DELEGATES.

JUDICES delegati in cauſa appellationis inter Gulielmum Frend, A. M. et Thomam Kipling, S. T. P. electi et dati ſunt

Gulielmus Wynne, Eques.
Dr. J. Hey, Sidn. coll.
Dr. Seale, Xti.
Mr. E. Chriſtian, Div. Johannis.
Mr. Lane, Coll. Regin.

Placeat vobis ut prædicti viri ſint judices delegati in prædicta appellationis cauſa *.

SUMMONS from the DELEGATES †.

WILLIAM Wynne, knight, doctor of law, John Hey, doctor in divinity, John Barlow Seale, doctor in divinity, Edward Chriſtian, maſter of arts, and John Lane, maſter of arts, judges delegates rightly and lawfully conſtitu-

* The delegates are nominated by the two proctors, and the members of the caput, except the vice-chanceller. The grace is then read in the houſes like other graces. In this caſe, the maſter of St. John's brought with him a written liſt, to which the others, except two, acceded.

† The ſummons is inſerted to ſhew, how totally ignorant the delegates were of the manner of proceeding in an appeal to the univerſity. By taking upon themſelves to ſummon, it ſhould ſeem that there is good ground for the generally received opinion, that they received a variety of documents and inſtructions from the cabal, which had acted againſt Mr. Frend. It was their duty to come into the univerſity, and it was then Mr. Frend's part, if he intended to proſecute the appeal, to wait upon them in perſon: but to ſummon the appellant, is out of all form and order.

ted,

ted, in the under-written cauſe, and between the under-mentioned parties, To our beloved in Chriſt, John Beverley, William Matthew, and Henry Gunning, eſquire bedels of the univerſity of Cambridge, greeting. Whereas in a certain cauſe of appeal and complaint which before us in judgment is now moved and depending between William Frend, maſter of arts, the party appealing or complaining on the one part, and Thomas Kipling, doctor in divinity, the party appellate or complained of on the other part, rightly and duly proceeding therein, We have decreed the aforeſaid William Frend, the party appealing and complaining, to be cited and admoniſhed to attend on the day time and at the place and to the effect and purpoſe under-written, (juſtice ſo requiring.) We do therefore ſtrictly enjoin and command you jointly and ſeverally, That one of you eſquire bedels of the ſaid univerſity do peremptorily cite, or cauſe to be cited, the aforeſaid William Frend, the party appellant and complaining in the ſaid cauſe, to appear before us in the law ſchools of the ſaid univerſity, on Friday the twenty-eighth day of this inſtant June, between the hours of nine and twelve in the forenoon, then and there to proſecute his ſaid appeal, and to abide in judgement until the final determination thereof, and further to do and receive as unto law and juſtice ſhall appertain, under pain of the law, and contempt thereof; and ye ſhall moreover intimate, or cauſe it to be intimated to the ſaid William Frend (to whom alſo we do ſo intimate by theſe preſents,) That we do intend to proceed, and will then and there proceed to hear and finally determine the ſaid cauſe of appeal according to law. And that you or either of you ſhall duly certify to us, what you ſhall do in the premiſes, together with theſe preſents. Given under our hands and ſeals, this twenty-firſt day of June, in the year of our Lord one thouſand ſeven hundred and ninety three.

After the ſummons had been read, the following converſation took place.

Sir W. Wynne. Are the parties here?

Frend. I am the appellant in this cauſe.

Sir W. Wynne. The delegates are ready to proceed. What is that paper? (to the regiſtrary.)

Regiſtrary. It is a paper which I received from Mr. Tyrwhitt.

Sir. W. Wynne. Read it.

The regiſtrary then read as follows:

Jeſus college, 20th June, 1793.

WHEREAS a grace propoſing five delegates was read a ſecond time in the non-regent houſe, on Friday laſt, and was then ſuffered to be taken away by the officiating bedel, without a ſcrutiny; which grace was afterwards approved by a majority of votes in the other houſe:

I Robert Tyrwhitt, a non-regent maſter of arts, do, within ten days, make this open and legal proteſtation againſt the ſaid grace.

1. In the firſt place, becauſe I had not a ſtatutable opportunity of expreſſing my diſapprobation of it, either in whole or in part, though I was preſent in the houſe at the time it was read.

2. In the ſecond place, becauſe both the perſons who acted as ſcrutators, were deputies, and neither of them ſworn agreeably to the law of the univerſity.

ROBERT TYRWHITT.

1. Stat. Vet. 161. De modo et forma petendi gratias.

Stat. Vet. 80. Quomodo ſcrutatores tenentur petere gratias.

Stat. Vet. 63. De gratiis petendis.

2. Stat. ſive gratia. De procuratoribus et ſcrutatoribus deputatis.

This writing I received of Mr. Robert Tyrwhitt, on the twentieth day of June, 1793. Mr. Tyrwhitt, at the ſame time, expreſſed a deſire that the ſame might be recorded.

GEORGE BORLASE, regiſtr.

Sir W. Wynne. Has Mr. Tyrwhitt any thing to ſay upon this?

Mr. Tyrwhitt. A great deal on all the ſtatutes which relate to the duty of ſcrutators and moderators on paſſing graces: but I did not think that I ſhould be called upon here. I thought another place more proper for this diſcuſſion, and accordingly propoſed my objections in the ſenate.

Sir W. Wynne. Do you wiſh to have the ſtatutes referred to read in the court?

Mr. Tyrwhitt. If you think it neceſſary, I do: but I deſire it may be underſtood, that it was not on account of this particular caſe that I objected: I ſhould have done it on any other matter of more than ordinary concern.

Sir W. Wynne. It muſt be at your requeſt, if they are read.

Mr. Tyrwhitt. Then I make it my requeſt, that they may be read. My objections were oppoſed in the ſenate houſe by ſome perſons there, with a degree of petulance

and violence, extremely unworthy of any member of the univerſity.

The ſtatute was then read

De modo et forma petendi gratias.

Item ſtatuimus quod procuratores vel eorum alter cum occupante vices alterius ſeu procuratorum vices occupantes quamlibet gratiam petendam privatim ſcrutari teneantur et quilibet regens alteri eorum votum exprimens ſecrete reſpondere præmonitus per alterum procuratorum privatim reſpondere teneatur et pro ſecreto habere teneantur tam ſcrutator quam ſcrutatus: et qui contra hoc ſtatutum venerit pænam de ſecreta revelantibus incurrat. Nulla etiam gratia conditionetur ſed pure concedatur vel negetur nec etiam aliqua gratia cum alia concurrat.

Mr. Tyrwhitt. It appears from this ſtatute, that on all occaſions the ſcrutiny ſhould be ſecret. The putting in of a non placet at reading actually ſubjects a perſon to a penalty. It is wrong that the omiſſion of putting in a non placet at the reading of a grace ſhould be made a pretence for depriving any member of his privilege of voting. No perſon is authorized even to tell in what manner he voted.

Mr. Lane. What do you mean by pretence and omiſſion?

Mr. Tyrwhitt. I mean only to repreſent the fact. The preſent practice of taking three ſteps in the houſe is a remnant of the original mode preſcribed by the ſtatute of walking round and aſking the votes ſeparately and privately, and ſuppoſes that a ſcrutiny has been actually taken. On common occaſions, this may be ſufficient: but,

but, on ſuch an occaſion as this, it is an abuſe of what even in ordinary caſes is only an indulgence.

The ſtatute Quomodo ſcrutatores tenentur petere gratias, was then read.

Item duodecimo die menſis Octobris anno milleſimo CCCC° LXVII° in plena congregatione regentium et non-regentium ſtatutum eſt atque ordinatum quod ſcrutatores electi arctentur ad petendum gratias et alia negotia univerſitatis exequenda ſecundum formam ſtatuti quo arctantur procuratores eademque pœna puniendi ſunt ſi ſecundum formam prædicti ſtatuti requiſiti id facere recuſent.

Mr. Tyrwhitt. This ſhews that ſcrutators and proctors are in this reſpect bound by the ſame laws.

The two other ſtatutes referred to by Mr. Tyrwhitt in his proteſt were then read.

De gratiis petendis.

Statuimus et ordinamus quod de cætero nulla gratia tempus aut formam concernens petatur niſi in præſentia cancellarii vice-cancellarii vel præſidentis et hoc in nova capella et non alibi concedatur excluſa parva capella eidem annexa ſalvis tamen gratiis quæ in antiquis ſtatutis ſolum regentibus reſervantur concedendis. Et ſi aliqua gratia vel gratiæ concedantur quod alter procuratorum vel alterius eorum vices occupans alta voce dicat in medio capellæ iſta gratia vel iſtæ gratiæ habentur in iſta congregatione. Et ſi aliqua gratia contra prædictam formam concedatur impetrans officio ſuo ſit ipſo facto privatus et utens ſcienter eadem gratia excommunicationis ſententiæ ſit ipſo facto ſubjectus a qua niſi in plena congregatione

gregatione per cancellarium vel ejus locum tenentem non valeat abſolvi. Et ad hujus ſtatuti continuam obſervantiam volumus ſingulos procuratores ac ſcrutatores futuros antequam admittantur ad eorum officia eſſe perſonaliter juratos.

Gratia 1575. Quod jurejurando aſtringantur procuratores et ſcrutatores deputati.

Conceditur 6 Maii cum procuratores et ſcrutatores ſæpe propter negotia ſua privata abeſſe cogantur a congregationibus et aliis publicis muniis academiæ ut eorum ſubſtituti et vicarii jurejurando aſtringantur ad bene et fideliter peragendum eorum officium antequam aliquid in præmiſſis pertractent.

Mr. Tyrwhitt. This provides that ſubſtitutes ſhould be ſworn before they act; which was not done. Mr. Collier was not ſworn before he read the grace. This is the hiſtory of the matter. It is the duty of the ſcrutators and proctors, after reading any grace in either of the houſes, to go and aſk every member of that houſe his vote perſonally. This appears from the bedel's books, from printed books, and every other authority by which the practice of the univerſity is directed. When I was ſcrutator, I took the votes, though no non placet had been put in.

Court. Is it the uſual practice now?

Mr. Tyrwhitt. No: not in ordinary caſes: it is connived at. But in extraordinary caſes, where any oppoſition is expected, it ought to be obſerved. In this caſe it was known that above twenty perſons came into the univerſity, in expectation that it would be oppoſed.

Court. Did you take the votes perſonally in all caſes when you were ſcrutator?

Mr. Tyrwhitt.

Mr. Tyrwhitt. No: not in all.

Dr. Hey. In what caſes did you?

Mr. Tyrwhitt. On one grace in particular, which, had I been only a private member, I certainly ſhould have oppoſed, but, as an officer, I could not.

Dr. Hey. Perhaps the purport of that grace was not very material.

Mr. Tyrwhitt. Yes; it was, in my opinion, very material; it was a matter which I had long and uniformly endeavoured to correct: it was a mandate decree for the maſter of St. John's college. But I repeat. I did not expect to be called upon here to explain the grounds of the proteſt: it muſt therefore be conſidered as a very ſhort and imperfect account of the buſineſs.

Sir W. Wynne. We ſhall not retire to take it into conſideration, till you have ſaid all that you chuſe.

Mr. Tyrwhitt. I will tell you then another inſtance, on which it was done. When the preſent vice-chancellor was a regent maſter of arts, a grace had been read in the non-regent houſe, and paſſed without a non placet having been put in. The preſent vice-chanceller, and the preſent biſhop of Lincoln, were adverſe to it, and wiſhed it to be read again, and put to the vote. They came very improperly into the non-regent houſe, and declared, with much violence, that there were perſons in the houſe, who wiſhed to oppoſe it. I remonſtrated upon the indecency of their coming as regents into the non-regent houſe to make their objections. However, I ſtated it to the houſe, and in conſequence of my repreſentation, the votes were taken.

Here the court retired for about five minutes; and on its return, Sir W. Wynne ſaid: The delegates have deliberated, and unanimouſly determine, that nothing contained in Mr. Tyrwhitt's proteſt, or urged by him

in

in its ſupport, ought to hinder them from proceeding in this cauſe; and they are accordingly ready to proceed. We are ready to hear the appellant.

Mr. Frend roſe, and after remarking on the unuſual ſtep of being cited by them, read the proper mode of proceeding, as deſcribed in the bedel's book.

'The delegates, which, by the ſtatute, are ordered to be at leaſt three in number, and at the moſt five, pro qualitate cauſæ, being choſen, the party goes to each of them, deſiring them to meet in the conſiſtory, or ſome other fit place; and when they are met together, he preſents the grace unto them as it paſſed in the ſenate; and when they have read it, they acknowledge acceptare in ſe onus commiſſionis, and declare themſelves ready and willing to perform the office of judges in that cauſe, juxta tenorem delegationis. After acceptation made, the party appellant, or his proctor, doth deſire the judges delegate to decree partem appellatam arreſtandam fore citra diem eorum arbitrio aſſignandam, to anſwer unto ſuch things as the party appellant ſhall object againſt him. If the party appellate will then appear, the cauſe is declared on both ſides, and the party appellant hath aſſigned him ad proponendum in forma on the next court day, wherein ſuch gravamina for the which he doth appeal, muſt be ſpecified. The proceedings afterwards are ordinary, ſuch as are in caſes of the firſt inſtance.

He concluded with ſaying: I beg leave to know, whether this is the mode which is to be followed now.

Sir W. Wynne. We think that the whole proceedings in the vice-chanceller's courts ſhould be firſt read.

Frend. Shall I make any remarks on them, as they go on?

Sir W. Wynne. As you pleaſe. But we think it better for the whole to be read firſt, and then for you to take up your

your exceptions: unleſs there is any part which you wiſh not to be read.

The regiſtrary then began to read the proceedings in the vice-chanceller's court; and when he came to the articles of accuſation, Sir William Wynne directed the quotations by which the reſpective charges were ſupported, to be read from the pamphlet itſelf.

Frend. They were not read in this place on the trial.

Sir W. Wynne. They ought to have been.

Frend. With ſubmiſſion, Sir, to you, I ſhould think it would be better to read them from the pamphlet in the courſe in which they were produced on the trial.

Sir W. Wynne. I have no objections. I am willing that they ſhould.

Regiſtrary reads to the words 'falſe, wicked, and malicious,' page 16.

Frend. In my defence, I obſerved to the court, that in denying the whole, I did not mean to deny every particular. I did not deny that I was a maſter of arts: I did not ſay that I was not the authour or publiſher: but I gave what, I believe, is uſual in ſuch caſes, a general anſwer.

When the regiſtrary began to read the depoſitions of the witneſſes, Mr. Frend addreſſed the court: You will take notice, gentlemen, that I gave into court, and do here repeat my proteſt againſt the validity of the evidence, the whole having been vitiated by the promoter's taking it out of court; and alſo for particular reaſons againſt particular perſons.

Sir W. Wynne. It will be impoſſible for us to judge, without hearing it all.

Frend. I only meant to ſave trouble: if it is of no uſe, it is only a waſte of time to hear it.

Dr. Hey. May it not be as well to conſider the proteſt now?

Sir W. Wynne. Perhaps it may be better. Will the regiſtrary ſay, that the papers, which Dr. Kipling took out of the court, were returned to him exactly the ſame?

Bedell. Is the regiſtrary to be ſworn?

Sir W. Wynne. I have no objection to his being ſworn.

Frend. I would ſpare the regiſtrary the oath, as I conceive it impoſſible for any perſon to take it: it is impoſſible to prove, or to be certain that the papers have not been altered. Except in the divinity ſchools*, I never heard of a proof being called for of ſuch a negative propoſition.

Sir W. Wynne. This is a court of juſtice, and we think it highly proper: they ought to be proved to be the ſame.

Mr. Frend then repeated the proteſt and the caſe of the jury, page 115, as a caſe in point. This was denied by Mr. Lane; and a ſhort converſation followed, in which Mr. Frend maintained, that if not ſtrictly in point, it yet concluded a fortiori in favour of his proteſt. For if the bare examination of a ſingle witneſs out of court, by a ſet of unintereſted and unprejudiced men, merely that he might repeat what he had ſaid before in court, was

* An opponent in the divinity ſchools aſſerted, that ſomething was not to be found in the new teſtament: Dr. Kipling, with his uſual acumen, inſiſted that he ſhould prove the aſſertion; and it was in vain that the opponent requeſted him to point out the paſſage in which it was to be found. Tuum eſt, ſaid the learned profeſſour, probare minorem.

yet

yet ſufficient to ſet aſide their verdict: how much more muſt the removal of the whole evidence affect its validity, when taken out of court by the promoter himſelf, and with the expreſs purpoſe of directing it in the moſt forcible manner to the conviction of the offender?

Here the regiſtrary repeated the declaration he had made in the vice-chanceller's court, that the papers had undergone no alteration, and that he was ready to ſwear to this. He was accordingly ſworn.

Sir W. Wynne. Are the papers which Dr. Kipling returned to you, the ſame which you gave to him?

Frend. Can you ſay that there are no marks, no eraſures, no obliterations, no alterations whatſoever, made by the promoter? Did you look all the papers over?

Regiſtrary. I did look them over, and they have not undergone any alterations while in the promoter's hands.

Mr. Frend now obſerved, that having no expectation, that the proceedings of the vice-chanceller's court would be thus taken up, he had not brought with him the copy of the evidence delivered to him by the regiſtrary: he deſired therefore permiſſion of the court, to go to his rooms for them. This being granted, Mr. Frend went out, and Mr. Lambert took the opportunity of going out for the notes which he had taken during the whole of the trial. On their return, the reading was reſumed, and very little progreſs was made before Mr. Frend obſerved the omiſſion of a word in his copy.

Regiſtrary. Your copy is not atteſted by me.

Frend. It has not your name to it, but it is on a proper ſtamp; it is marked as having been examined; it

ought therefore to be literally exact. If it is not exact, for what purpoſe was it given to me?

The regiſtrary went on reading; and Mr. Frend, after remarking repeated variations, obſerved, that if miſtakes of this kind are ſo eaſily made in copies taken and examined as accurate, it muſt be extremely difficult to ſwear to the identity of writings.

When the regiſtrary read the reſolutions and ſignatures, p. 34, 35. Mr. Frend aſked him, whether they were given to the promoter?

Regiſtrary. Yes; I preſume they went with the other papers: I cannot be certain. But if they did, they returned as they went.

On Mr. Lunn's evidence, Mr. Frend obſerved, that no notice was taken of the objection and anſwer of the commiſſary, p. 42. but that the gentleman who aſſiſted him in taking the notes of the trial, is ready to ſwear that he did object. He obſerved, at another time, that the depoſitions of each witneſs had been tranſcribed all together, without any diſtinction of the different times in which he had been called up; and that the regiſtrary was now reading them in ſuch a manner, that the delegates might conclude it was all one continued depoſition. He begged leave to recommend the ſame order in reading the depoſitions, as had been followed in the proceedings at the trial.

Regiſtrary. I cannot ſpeak to the order.

Frend. This is another inſtance of the irregularities of this buſineſs.

On Mr. Plampin's evidence, p. 54. Mr. Frend obſerved: Here is another omiſſion of important matter. No notice

notice is taken of my objection to this man's evidence. I excepted to him on two grounds. Mr. Lambert is ready to atteſt it. Mr. Lambert here roſe and offered to make oath of the above, but the court rejected his offer; Sir William Wynne declaring, that they could not attend to any thing not in the regiſtrary's minutes *.

On Mr. Hodſon's evidence, Mr. Frend obſerved, that Mr. Marſh was called in, but the regiſtrary had taken no notice of that circumſtance. This ought to be attended to, as it proved the ground of a ſerious complaint from Mr. Marſh, of the treachery which had been practiſed againſt him. He had been promiſed, that, if he were called upon to give evidence, it would not be with any view of proving the publication: whereas on the trial it appeared, that he was called upon for that very purpoſe. Mr. Frend then deſired that he might read what Mr. Marſh had ſaid in court, as it would eſtabliſh his charge of malice in the proſecuters.

The court ſaid, that as this did not appear on the minutes, it could not come before them.

On Mr. Alger's evidence, Mr. Frend obſerved: The court does not perhaps ſee the tendency of theſe queſtions and anſwers. That copy of the pamphlet had been taken out of court, and the commiſſary himſelf had expreſſed his ſurprize at it. Several other remarks were made by Mr. Frend on various parts of the depoſitions, proving their inaccuracy: and at the cloſe of them he obſerved, that the whole of the evidence was too inconcluſive for the judges to have formed any opinion upon it; that the proceedings of the court had been very irre-

* Where did Sir W. Wynne learn this doctrine? An appeal is made on account of irregularities in the minutes, and, according to him, the minutes only are to be read. This may do in doctors commons, but it is not academical law.

gularly

gularly recorded; that all that had paſſed ought to have been regiſtered; for, as the vice-chanceller took upon himſelf to make the heads concur with him under a law, which required the conſent of the majority, and the maſter of Trinity, without whom that majority could not have been formed, was abſent ſeveral days, the proceedings ſhould have been taken down with accuracy; otherwiſe the maſter of Trinity had no opportunity of forming a judgment. Indeed he muſt have been totally unacquainted with the nature of many objections ſuggeſted by Mr. Frend; and yet, without his concurrence, no recantation could have been propoſed. This was a grievance exceeded only by that which could not have eſcaped the obſervation of the delegates, ſince it was manifeſt to every perſon, that from the beginning to the end of the buſineſs, the proſecuters and the judges were one and the ſame party.

The third article having been read, p. 64, Mr. Frend addreſſed the court: When this charge was read by the promoter, I objected then, and I muſt repeat it now, that no ſuch paſſage was to be found in the book, as that which the promoter articled againſt me. But there is no entry of this objection in the acta curiæ: which proves that the maſter of Trinity could not be a competent judge in the caſe. He heard none of my objections to the mode of quoting mutilated paſſages, nor of my proofs of the neceſſity of producing the words themſelves.

On article the fifth being read according to acta curiæ, page 64, Mr. Frend obſerved, that here again the maſter of Trinity could be no judge, not having heard either his, or the promoter's remarks. The promoter, by way of directing the proceedings of the court, produced the caſe of Charke; but being queſtioned, whether Charke had been ſummoned to appear in the vice-chanceller's court, and on

ſeveral

ſeveral other points neceſſary to eſtabliſh his caſe as a precedent, could ſay nothing, though the maſter of Trinity, from what appears in the acta curiæ, muſt naturally ſuppoſe that it was admitted as a caſe in point.

Dr. Seale. Did not the judge ſuffer every thing to be ſtated, which you expreſſed a deſire to have inſerted?

Mr. Frend. No: he ordered the regiſtrary to mind what he ſaid, not what I ſaid.

When the regiſtrary had finiſhed the acta curiæ for the thirteenth of May, p. 64, the court was adjourned to a quarter paſt four in the afternoon.

SECOND COURT.

Before the right honourable and right worſhipful William Wynne, &c. on Friday the 28th day of June, 1793, in the afternoon, &c.

THE reſt of the proceedings and evidence in this cauſe were read.

And the judges then declared, that the proceedings with the evidence had and taken in the court below, having been read and gone through in this court, they the judges now called on him Mr. Frend to proceed in his appeal.

Mr. Frend objected, that a certain paper relative to the ſentence in the court below, and ſigned by the heads of colleges, had not been read. The judges enquired of the regiſtrary for that paper, who declared that it was not committed to his cuſtody. Mr. Frend then declared,

that

that he conceived he was not, by the ſtatutes, [or practice and uſage of the univerſity] held to proceed in his appeal till the next court day, particularly by the 48th ſtatute, and an interpretation of the ſame, dated Oct. 6, 1596.

The judges having conſidered the ſaid ſtatute, and the interpretation, were of opinion, that the interpretation had no reference to cauſes of appeal; and again called on Mr. Frend to proceed on his appeal. Mr. Frend declared, that he was not yet fully prepared. The judges deliberated; and declared they would hear Mr. Frend to-morrow, immediately after the morning congregation. Mr. Frend objected, that to-morrow being a holy-day, was not a dies juridicus: but the judges over-ruled this objection.

And the court was adjourned accordingly to to-morrow after the morning congregation.

When the regiſtrary came to the vice-chanceller's declaration in the acta curiæ of the 28th of May, p. 168, that he was ſatisfied that Mr. Frend was proved to be the authour and publiſher of the pamphlet, Mr. Frend obſerved that this was very improper: it ought to have been, we the vice-chanceller and heads of colleges are ſatisfied. How elſe does it appear, that they were convinced? and unleſs they were convinced, how could they ſign the ſubſequent reſolutions and ſentence? The proceedings of this day are very imperfectly recorded. I ſhould have ſpoken then on the form of the recantation propoſed to be ſigned, but was prevented very abruptly by the vice-chanceller, who adjourned the court very improperly, without giving me an opportunity of being heard.

On the acta curiæ of the 30th of May, p. 172, Mr. Frend obſerved, that he brought a paper, which was not allowed to be entered on the proceedings of the court.

Sir

Sir W. Wynne. Nothing of this appears on the record.

Frend. No, Sir, becauſe it was not allowed.

As ſoon as the regiſtrary had cloſed the reading of the papers, Sir W. Wynne aſked for the reſolutions at Queen's college, and then addreſſed Mr. Frend: We have heard now all that has paſſed hitherto, and are ready to hear what you have to ſay.

Frend. I obſerve, Sir, that you have not yet heard all; there were certain reſolutions entered into at the vice-chanceller's lodge, which you juſt now ſeemed to enquire after, but which I did not know that you were aware of.

Sir W. Wynne. They are not here; we know nothing of them *.

Frend. I beg that the delegates may know that ſuch reſolutions were paſſed at Queen's college.

Regiſtrary. There is no copy of them in court.

Frend. There was a copy ſent to me. The ſentence has been read: the reſolutions were brought into the vice-chanceller's court, and ſhould have been read as part of the acta curiæ.

Sir W. Wynne. They are no part of the proceedings ſubmitted to us.

Frend. Then I ſhall be ready to produce my gravamina on the next court day.

Sir W. Wynne. We are ready to hear them now.

Frend. It cannot be, I apprehend, on this day.

Sir W. Wynne. Why not?

Frend. Becauſe it appears from the books by which the practice on theſe occaſions is regulated, that the griev-

* How came Sir W. Wynne then to enquire after them?

ances are not to be produced till the next court day. I ſhall read an extract from the bedell's book, in proof of my aſſertion. Having ſtated that a day is to be appointed for the appearance of the party appellate, it goes on, 'If the party appellate will then appear, the cauſe is declared on both ſides, and the party appellant hath aſſigned him ad proponendum in forma on the next court day, wherein ſuch gravamina, for the which he doth appeal, muſt be ſpecified. The proceedings afterwards are ordinary, ſuch as are in cauſes of the firſt inſtance.'

The only queſtion now is, when the ſecond court day is to be: and this is explained by an interpretation of the heads, Oct. 6, 1596, which direct that the ſecond court day can only be ſome court day in the following week. The interpretation runs in theſe words: 'Whereas it is carefully by ſtatute provided, that all cauſes and controverſies hereafter commenced or coming before Mr. Vice-chancellor, ſhould, with great expedition, be adjudged and determined: yet notwithſtanding it is of late years come to paſs, that cauſes are often a very long time delayed and protracted, not only to the great trouble of the magiſtrate * * * * of ſuitors, and their extreme charge and hinderance, but even to the diſcredit of the court and univerſity.

'For remedy whereof, Mr. Roger Goade, doctor in divinity, vice-chanceller of the univerſity, and the heads of colleges, whoſe names are underwitten, have and do interpret and explain a doubt riſing of a branch of the former part of the 48th chapter of the ſtatute intituled, De cauſis forenſibus, and beginning thus: Omnes cauſæ et lites quæ ad univerſitatis notionem pertinent, &c. finem autem accipiant infra triduum ſi fieri poteſt omni juris ſolennitate ſemota, viz. in theſe words: infra triduum ſi fieri poteſt, that all cauſes and controverſies whatſoever wherein the vice-chancellor is competent judge, ſhall be by him, or his deputy, adjudged, determined, and ended,

within

within three ſeveral ordinary court days, and thoſe within three weeks next immediately following, (ſaving and excepting ſuch weeks and court days as by law are to be excepted, as dies non juridici,) the firſt day of the three to be the firſt court day next after the day upon which the party defendant ſhall or ought to make his perſonal appearance, and the other two, the two ordinary court days in the two ſeveral weeks next following, without any fraud or further delay.'

Sir W. Wynne. The interpretation does not appear to refer to the cauſes of appeal, but only to proceedings in the vice-chanceller's court; and therefore you ſhould be ready now.

Frend. I came here with the beſt information, I could procure from the ſtatutes and the books of practice, relative to the courſe which I was to follow in theſe proceedings.

Dr. Hey. Are the books called the bedell's books, Bucks' books, or what authority have they?

Frend. All proceedings in cauſes of appeal to delegates, muſt be conducted in the ſame manner as cauſæ forenſes, except in the preparatory part, which is regulated by theſe books.

Sir W. Wynne. I cannot tell what authority is aſcribed to theſe books. They can have none, but as it is confirmed by the practice of the univerſity.

Frend. I can only revert to them as the beſt directions I could procure.

Sir W. Wynne. Why cannot you enter on your gravamina now?

Frend. Becauſe I am not prepared. I came here this day with the expectation of hearing that the cauſe would be propoſed, and that then you would appoint ſome court day in the next week for me to produce my grievances.

The delegates now retired for nearly half an hour; and on their return into court, a little before ſix, Sir

William Wynne addreſſed himſelf to the appellant: Mr. Frend, the delegates are willing to allow you all poſſible indulgence, and therefore will allow you till to-morrow morning, after the congregation, to enter on your defence.

Frend. Gentlemen, to-morrow is not a dies juridicus; it is a ſaint's day; there is a ſermon in the univerſity church. The proceedings in this very cauſe in the vice-chanceller's court were put off two days on the ſame account. I believe that the maſter of Catharine-hall ſuggeſted the propriety of it, and the court acquieſced in it.

Sir W. Wynne, (to the maſter of Catharine-hall.) Was your objection founded on the reaſons urged by Mr. Frend?

Maſter. Not at all. I only did it as inconvenient on account of the ſermons.

Frend. I muſt ſtill maintain my objection to the appointment of to-morrow for hearing my gravamina as informal and irregular.

Sir W. Wynne. We take that irregularity upon ourſelves, and will allow you no further delay than till after the congregation to-morrow morning: the ſitting to be reſumed after the congregation in the afternoon.

Accordingly the court was adjourned.

THIRD COURT.

Before the right honourable and right worſhipful William Wynne, &c. Saturday the 29th day of June, between the hours of twelve and three, &c.

THE minutes of the two courts of yeſterday were read: and in the latter, after the words "he was not, by the ſtatutes," were inſerted the words "or practice and uſage of the univerſity."

Mr. Frend then read and preſented a proteſt againſt his being called upon to produce on this day his gravamina,

mina, and desired it might be entered on the records of the court.

The court was unanimously of opinion, that Mr. Frend should now proceed to the gravamina.

And Mr. Frend did proceed to the gravamina accordingly; in the course of which he read to the court a paper, which, he alledged, he had been prevented by the vice-chanceller from reading in the court below, before sentence was pronounced upon him.

When Mr. Frend had finished, Dr. Kipling was called upon by the court, and asked if he was then ready to reply.

Dr. Kipling declared, that he was then ready to answer to interrogatories from the court: but that he had heard nothing that day that he desired to answer.

The court declining to put interrogatories to Dr. Kipling, he declared that he was willing to submit the whole to the judgement of the court.

And the court was adjourned, to sit after the congregation in the afternoon of the same day.

After the registrary had read his papers, Mr. Frend rose, and desired leave to observe, that he had not objected to the production of his gravamina on this day, merely on account of the interpretation of the statute applying particularly to cases of appeal: the application of that interpretation was universal, and related only to the explanation of time meant to be allowed in all cases by the word triduum. My objection, continued Mr. Frend, was, on the ground of practice, collected from the instructions handed down as authority for the publick officers of the university.

Sir W. Wynne. There can be no objection to any plea from customary usage and common practice: this day

day was certainly objected to by Mr. Frend, but the objection was not admitted to have any weight.

Dr. Hey. I would not be understood to have acknowledged the authority of the bedell's books; I asked if they were Bucks' books, but received no answer.

Bedell. Bucks' books are here in court, and may be consulted, if you wish it.

Dr. Hey. Not at all.

Mr. Frend then addressed the court:

Gentlemen,

In the situation in which I stand, it cannot be supposed that I wish to offend any of the delegates; and in the step which I am about to take, I request you to consider me as acting upon motives which affect every member of the senate, and as being here not only to complain of private grievances to myself, but to withstand every proceeding which may hereafter be brought as a precedent to the injury of the members of the university. With this view I entered my appeal from the sentence of the vice-chanceller and the heads; and to support this appeal, I have endeavoured to gain all possible information on the proper mode of carrying it on. I stated yesterday what I gathered from the bedell's books as the most authentick guides which I could follow. This I considered, and still consider as the proper rule of this court, and without presuming to call in question your honour and integrity, I must protest against what appears to me an unjustifiable precipitation in this business. In the most respectful manner therefore, I do desire that my protest may be taken into your serious consideration, not on my own account merely, but that I may not by any conduct of mine, lay the foundation for a precedent, by which others may hereafter be essentially injured.

PROTEST.

PROTEST.

I William Frend, M. A. and fellow of Jeſus college, in the univerſity of Cambridge, do hereby proteſt againſt my being called upon to produce on this day my gravamina in a certain cauſe of appeal now pending before Sir William Wynne, LL.D. John Hey, D.D. John Barlow Seale, D.D. John Lane, M. A. Edward Chriſtian, M. A.

For the following reaſons:

1. Becauſe the proceedings in all cauſes of appeal muſt be directed either by the ſtatutes and interpretations, or the ancient and conſtant practice of the univerſity: but the ſtatutes and interpretations are all ſilent as to the proceedings in cauſes of appeal. Therefore there remains only ancient and conſtant practice by which they can be directed.

2. Becauſe in certain books called the bedell's books, the authority of which in matters of practice is always admitted, expreſs directions are given for the party appellant to ſpecify his gravamina on the next court day after that on which the cauſe has been declared.

3. Becauſe by the interpretation given by the heads, Octob. 6, 1596, of the word triduum, it appears that the next court day can only be underſtood, of the next court day of the enſuing week.

W. FREND.

Having read this proteſt, Mr. Frend ſigned it, and having delivered it into court ſaid: If, after the proteſt, you think me obliged to proceed, I am ready.

Sir W. Wynne. We are unanimous in ſaying, that you ought to proceed now.

Mr. Frend then addreſſed the court, in ſubſtance as follows:

Reſerving

Reſerving to myſelf, gentlemen, the right of making, if neceſſary, my exceptions to this mode of proceeding, I ſhall, without further delay, ſtate the grievances under which I have laboured. I have called, and do call the proſecution malicious. A proof of malice, and that the proſecution never originated in a pure love of juſtice, or a ſimple regard to propriety, is, that a knowledge of the means of puniſhment appears always to have fallen far ſhort of the deſire to inflict it. When the former has been nearly extinguiſhed, the latter has blazed with unabated flame. At the firſt meeting of my proſecuters, it was determined, after ſome debate, that I ſhould be proſecuted in the vice-chanceller's court, for having publickly and notoriouſly offended againſt a grace paſſed by the ſenate of this univerſity, in the year 1603, in preference to a proſecution for having violated the ſtatute de concionibus, and without any mention of other laws: but at a ſubſequent meeting it was agreed, that I ſhould be proſecuted for having publickly and notoriouſly offended againſt the laws of the univerſity, without ſpecifying any in particular. Now, amidſt this uncertainty and fluctuation of council, if my proſecuters had been actuated only by a regard for juſtice, or, indeed, if they had not been entire ſtrangers to that virtue, would not ſome one of them have ſaid; If there is ſo much difficulty in finding out any law againſt which Mr. Frend has offended, how can he be ſaid, to have violated any publickly and notoriouſly? Or how can we plead a ſenſe of duty or conſcience in endeavouring to bring him to puniſhment?

Another proof of malice is,-that many of the charges brought againſt me, have been founded, not on any undoubted paſſages in the book, but have been ſupported by paſſages miſquoted, and mutilated, not only by the inſertion or omiſſion of particular words, but by leaving out whole propoſitions.

I am

I am ſaid to have defamed the liturgy, by aſſerting, that it is far from the ſtandard of purity in doctrine only; but in the original it is ſaid, in its arrangement, language, or doctrine. If the promoter, and the cabal, had not been actuated by the fiend of malice, they could not have ſuppreſſed the other particulars, nor have repreſented me as charging that imperfection upon a ſingle point, which they muſt know the authour had expreſſly charged upon the accumulated defects of all the three. As well might I be ſaid to defame the moſt beautiful woman in England, by a compariſon of her beauty with the Venus de Medicis. Suppoſe me to have ſaid that, conſidering attitude, figure, and grace, ſhe was inferiour to this celebrated ſtatue; is that ſaying, in figure only ſhe was ſo much inferiour as to have no pretenſions to beauty? Theſe are two out of an infinite variety of circumſtances on which I ground my charge of malice in the proſecuters. I wiſh the promoter may be aſked if he has any thing to reply which can repell this accuſation.

Sir W. Wynne. You are to go on in producing all which you have to alledge.

Frend. Is the promoter to anſwer at any other time?

Sir W. Wynne. He is to do as he thinks fit as to his anſwer.

I come then to the ſecond grievance:

II.

I was cited to appear on the ſtatute de concionibus, in the vice-chanceller's court. It was becauſe I was then, and I am ſtill, firmly perſuaded that the vice-chanceller's court had no buſineſs whatſoever with any of the offences deſcribed in that ſtatute, that I entered my proteſt, which

is now in poſſeſſion of the court. It is not neceſſary to repeat it here, as it has already been read. This, gentlemen, I feel to be a very particular and extraordinary grievance, that I was cited to anſwer for the violation of a law, which was not cognizable in the court before which I was ſummoned to appear.

III.

I have charged the promoter and the cabal with malice: I have now to impute to the vice-chanceller himſelf a bad deſign, in endeavouring to effect my puniſhment by two different and diſtinct laws. He could not be ignorant, that no perſon had ever been puniſhed in the vice-chanceller's court on the ſtatute de concionibus; ſo that, had not I been aware of the non-exiſtence of the grace of 1603, he might, and doubtleſs meant to have proceeded to puniſh me upon it. There was another artifice in the vice-chanceller, which cannot be imputed to any but a baſe deſign. This conſiſts in availing himſelf of the authority of a vice-chanceller's court, to compell evidence upon oath: which could not be done by the vice-chanceller and heads of colleges aſſembled under the authority of the ſtatute de concionibus. All evidence there, he well knew, muſt be voluntary. The impropriety and injuſtice of having been ſubjected to appear for the ſame offence on two diſtinct laws, cognizable before two ſeparate juriſdictions, muſt be obvious to you, and to every perſon in the leaſt acquainted with the laws of this land. Suppoſe, for inſtance, a juſtice of the peace, after hearing evidence at the quarter ſeſſions, ſhould, upon the ſtrength of that evidence, take upon himſelf to puniſh, when he got home, the accuſed perſon by his own authority, would ſuch a proceeding be eſteemed legal? Could a puniſhment be inflicted by a ſingle magiſtrate,

magiſtrate, which required the concurrence of the bench, or vice verſa? Muſt not an accuſed perſon be tried in the proper court, and be convicted according to evidence in that, not according to any thing which may have been produced in another court? I will be bold to ſay, that no engliſhman, no academick, can ſubmit to ſuch an unexampled abuſe of every mode of trial. To the complaints, therefore, of malice in the proſecuters, I muſt add a bad deſign in the judge himſelf.

IV.

But ſuppoſing that as an academick, I had offended againſt the ſtatute de concionibus, my offence was cognizable only before the proper judges appointed in that ſtatute, the vice-chanceller and heads of colleges. It was unjuſt, it was indecent, for a number of maſters of arts to form a cabal againſt a member of their own body. Such combinations are every where highly improper, but here they cannot be too ſeverely reprobated. What then ſhall be ſaid, when this cabal has the audacity to concert its plots, and to form its reſolutions at the vice-chanceller's lodge! Yes, gentlemen, incredible as it may ſeem, my proſecuters were ſuffered, nay, encouraged, to meet in the houſe of the judge himſelf. There the firſt reſolutions were agreed upon—there the committee was appointed—there the chairman choſen—and, in ſhort, there was every meaſure taken, and every trap laid, by which an obnoxious member was to be perſecuted and enſnared. What engliſhman would ſubmit patiently to inſult and oppreſſion like this: or what judge would ſuffer his roof to be polluted by ſuch arts as theſe? Would you, Sir, [to Sir W. Wynne] in the court in which you preſide, permit the proſecuters, in any cauſe, to aſſemble in your houſe, and there concert the means and meaſures of the trial? No, Sir, you would not, nor any judge in Eng-

land; nor any man even here, except ſuch a man as actually ſuffered it. This, gentlemen, I do then complain of as a moſt ſerious grievance, of a ſingular and alarming nature, that the proſecuters and the judge, in my caſe, made one and the ſame party.

V.

Perhaps after the recital of ſuch grievances, it may be thought ſuperfluous in me to produce more: but as was the commencement of this buſineſs, ſo was its progreſs, and ſuch was its end: it was begotten in malice, foſtered in treachery, and accompliſhed in oppreſſion. Gentlemen, you have heard read, what are called the proceedings of the court upon my trial: they are not the proceedings of the court, but a very different thing: indeed, ſo totally different, that unleſs my friend Mr. Lambert, and myſelf, had aſſiſted in ſupplying deficiences, in rectifying the order, and diſentangling this chaos, it would have been impoſſible for you to have proceeded. Had they been put into your hands in ſuch a ſtate, without comment or obſervation from us, I defy any man to have underſtood the purport of them, or to have formed a juſt judgment upon the iſſue. It is with truth I aſſure you, that with all the aſſiſtance of notes, taken during the whole of the trial, and every advantage of perſonal recollection, Mr. Lambert, and myſelf, were more than ſix hours laborioufly employed in arranging and reducing them to an intelligible order.

This defective and diſorderly ſtatement of matters, which are ſuppoſed to have been exactly recorded, and the omiſſion of a number of particulars, which I conceive to be eſſential to my vindication, I muſt conſider as another grievance. I am precluded from all remedy here, unleſs I were allowed to call witneſſes, to atteſt every

omiſſion

omiſſion which I have remarked: but the calling of evidence now would be of no avail; ſince your deciſion is to be guided only by papers before the court. Yet theſe papers contain no account of my proteſt againſt the admiſſibility of certain witneſſes, none of my obſervations on the irregularity in the proceedings; on the impropriety of examining witneſſes in preſence of each other; of reminding them not only of what each other had previouſly depoſed himſelf, but what others had ſworn before; of dictating to the witneſſes the anſwer they were expected to give; and of admitting the evidence of perſons intereſted in the proſecution,—nay, of perſons who were themſelves principals in the proſecution.

VI.

The ſixth grievance is of ſuch a nature as requires barely to be mentioned in a court of juſtice. After I had appeared to the citation for four days together, and the examination of evidence was all finiſhed, and taken down in writing by the regiſtrary, this very writing was taken out of court, and put into the hands of the promoter, the proſecuter, the very man from whoſe wicked and malicious deſigns I had moſt to fear, and for the very purpoſe of carrying thoſe deſigns moſt effectually into execution. This I have maintained, and I do ſtill maintain to be an act which in any court of juſtice ought to invalidate the whole; and that, in fact, from the moment when the regiſtrary's minutes went into the poſſeſſion of Dr. Kipling my judges had no grounds whatever to decide upon.

VII.

The vice-chanceller having been defeated in his deſign of enforcing the execution of the pretended law of

1603,

1603, and not being able to proceed on the ſtatute de concionibus, without the concurrence of nine heads, it was neceſſary that the maſter of Trinity ſhould complete the number: but the maſter of Trinity, though preſent in court the firſt day, had been abſent on all the examination of evidence, nor did he return into the univerſity till after the proceedings of the court had been in the hands of the promoter: he could therefore have nothing on which to ground his opinion, or by which he could juſtify his concurrence in the ſentence.

Here the maſter of Trinity got up, and aſked if he might ſpeak a few words; but Dr. Wynne obſerving, that it was not neceſſary, Mr. Frend went on: I do conceive this to be very juſt cauſe of complaint, that without any authentick evidence at all, or on ſuch a miſerable repreſentation of it, the maſter of Trinity ſhould bring himſelf to join in a ſentence, which, without his concurrence, could not have been paſſed.

VIII.

But ſuppoſing the maſter of Trinity to have been preſent all the trial, and the vice-chanceller to have acted with the due concurrence of the ſtatutable number of aſſeſſors, the firſt thing which the ſtatute orders to be done is, that the offender ſhould be required to recant. This, gentlemen, was never done; no recantation was ever propoſed to me: a paper indeed was put into my hands, which the vice-chanceller thought proper to call a recantation, but which, on peruſal, I found to be abſolutely unintelligible on the one part, and unreaſonable on the other. I would have expoſtulated upon this at the time when it was firſt given me, but was ſilenced by the violent noiſe of, order! order! from the vice-chanceller, and the court was abruptly and indecently adjourned. I

brought,

brought, the next court day, a paper containing my objections into the court, but was prevented from reading it, by the menacing language of the vice-chanceller; and with much difficulty I prevailed upon him to take it, and look at it himself: he returned it to me, and would not permit it to remain in court. I will now read it, and put it into your hands for your consideration.

Sir W. Wynne. You may read it as part of your speech.

Here Mr. Frend read the paper.

This paper I attempted in vain to read in the vice-chanceller's court. I will now sign it, and deliver it into this court.

Sir W. Wynne. I do not know whether it is any part of the process.

Frend. I must submit to you, whether you will receive any paper at all from me.

Sir W. Wynne. Certainly not.

IX.

Then my grievances are far greater than I had ever imagined: for if the vice-chanceller's reception of any paper, which I offered to him, is a reason against its being admitted here, by acting as he did, he added to the injustice of his conduct, and aggravated the injury, by precluding me from the possibility of redress.

X.

My next appeal is to the absolution which I produced in bar of sentence, and by which I had been regularly acquitted by the vice-chancellor at the end of the term,

of

of all ſtatutable offences previouſly committed by me, and had been formally reſtored to God and the holy ſacraments *. Theſe, gentlemen, are ſolemn words: and if the vice-chanceller thought proper to treat it with contempt, I ſtill maintain, that either I ſtood abſolved by it from any charge which had been brought againſt me for violation of the ſtatutes, or the univerſity is three times in a year guilty of the moſt flagrant impiety in the ſight of God and man.

Whatever degree of ſuperſtition may be charged upon our anceſters, there was wiſdom in ſuch a proviſion as this; they did right to diſcourage and to check all thoſe iniquitous cabals, by which ſtudious men might be moleſted, and the progreſs of literature and ſcience be ſuſpended by the interruption of ſuits and litigations. It is very natural that this obſervation ſhould be treated with ridicule by the promoter, the ſubpromoters and the familiars: but let them remember that they derive their ranks, their degrees, and their offices in this place, from the very ſame authority to which I now appeal; and let not them deride a ſalutary law, tho' it may have originated in the impure ſources of ignorance and ſuperſtition. How much ſoever we may now deſpiſe the pretended power of any perſon to abſolve, it is ordered expreſsly by the ſtatutes that the vice-chanceller ſhould pronounce abſolution at the end of every term; and whatever exceptions may in theſe times be taken as to the form, whatever have been the notions on which it was founded, the regulation, I repeat it, was wiſely calculated for this place. Should any literary man ſubject himſelf here to proſecution, the eſtabliſhed authority ſays, let him be fairly tried, let him not be kept in ſuſpence to the detriment of his own purſuits and the injury of literary enquiry. It was foreſeen that a number of ignorant or malicious men, people of no occupation and

* See page 177.

of

of no principle, might cabal together againſt an individual, whoſe activity and induſtry might render him obnoxious to them. The univerſity ſays, We will countenance no ſuch proceedings: we will put a ſtop to litigation and ſuſpence: no man ſhall be haraſſed by tedious proſecutions: no man ſhall be interrupted in his ſtudies for more than one term: at the end of every term the vice-chanceller ſhall abſolve. It was on theſe conſiderations that I felt myſelf entitled to the protection which the univerſity intended to hold out to men of letters and application; when I found myſelf, after a number of fruitleſs remonſtrances, compelled to reſort to it, it was under the full perſuaſion that I was vindicating the honour of our inſtitutions; and, when I ſaw my appeal treated with contempt and ridicule, I felt that, in my perſon, were inſulted the rights and privileges of the ſenate.

XI.

Another grievance is, that the ſentence does not relate to any offence poſitively prohibited in the law under which I am tried: for the ſtatute de concionibus ſays nothing about either printing or publiſhing a book. It deſcribes only ſermons, common places, theſes, and ſuch other publick diſcuſſions, as fall of courſe under the immediate cogniſance and obſervation of the vice-chanceller and heads, who are ſuppoſed to attend upon them.

I have indeed heard it ſaid, that the words aliter publice imply all modes of making publick whatſoever, and that the publication of books muſt be included in it. But no perſon at all acquainted with the interpretation of penal laws can maintain ſuch a poſition: a general clauſe annexed to a particular enumeration of offences cannot, by any legal or fair conſtruction, relate to any other kind

of offence than ſuch as had been before ſpecified. Now the very title of this ſtatute de concionibus, marks out at once the nature of the offences to which it was meant to apply, and the publick manner of conducting the ſeveral exerciſes enumerated in it, (which are all ſuppoſed to be performed in the preſence of the vice-chanceller and heads of houſes,) plainly ſhews, that 'aliter publice' muſt mean only ſome other ſuch kind of publication as had been before recited.

In what I have advanced on the conſtruction of a penal law, I am juſtified by the expreſs authority of a perſon very learned and moſt reſpectable in the civil law. (Here Mr. Frend quoted the opinion of Dr. Harris, upon the ſtatutes of Jeſus college, and applied the opinion which he gave on that caſe to the proceedings of the univerſity.)

I am ready to acknowledge, that had I maintained any offenſive doctrines in a ſermon, common place, or theſis, or in any other ſuch publick manner, whether in ſpeaking publickly in the ſchools, in the ſenate, or in any other place, and on any other occaſion, where the duty of the vice-chanceller and heads require them to be preſent, I ſhould indeed have been liable to their cenſure under this ſtatute. So far from this, I am puniſhed by the vice-chanceller under this ſtatute for my temerity in writing a book: but be the contents of that book what they may, the authour is not liable to be puniſhed for them under that ſtatute: he may print a book in London —he may do it privately—however he does it, he does not neceſſarily for that fact come under the cogniſance of the conſtituted authority. It exceeds the authority of the vice-chanceller and heads, to puniſh any man for his temerity in writing a book.

XII.

But the publiſhing of a book makes only part of the offence. The promoter indeed did employ much time and great labour, in attempting the proof of this; he ſhould have recollected, that the proof of any criminal aſſertion in that book was equally neceſſary to eſtabliſh the offence as the proof of the publication itſelf: but this was never done. Suppoſing me the authour, there is no proof whatever that I ſaid any thing in that book which ſubjected me to puniſhment. The promoter endeavoured, by garbling ſentences, and mutilating paſſages, to make up a kind of charge againſt me; but it was requiſite that particular paſſages ſhould have been faithfully and literally quoted, and particular errours demonſtrated to have been fairly deduced from them. I ſhall read you part of the opinion of the ſame learned civilian I have already quoted. (Paſſage read from p. 16.) This is the declared opinion of a perſon of great authority in the civil law, whoſe opinion is frequently taken by men of this univerſity: and I do declare, that it has no where been proved that I have maintained any poſition contrary to the doctrine or the diſcipline of the church of England, as by law eſtabliſhed. The promoter could not ſupport the charge, and the criminality of the pamphlet ſtill remains unproved.

XIII.

But, after all, ſuppoſing that the crime had been fairly proved upon me, and that the vice-chanceller was legally empowered to proceed upon the ſtatute de concionibus, ſtill no ſentence could be pronounced, no puniſhment inflicted till the guilty perſon had been required to recant. Recantation implies errour, and this errour muſt be ſpe-

cified before it can be acknowledged, or given up. No ſuch thing has taken place in the courſe of theſe proceedings: I was required to retract from the errour and temerity of publiſhing a book. Gentlemen, it was inſolence in the extreme to put ſuch a paper into my hands, as what they called a recantation. I am very ſenſible that I am ſpeaking now to gentlemen as well as delegates, and I will not ſcruple to ſay that no man of letters could conſiſtently put ſuch a paper into my hands: much leſs could I be ſo baſe a ſcoundrel as to ſign it. The paper ſpecified no errours; nor did my judges in fact deſire it. If they had, they ſhould have come forward fairly and ſaid, You have maintained ſuch and ſuch opinions, which we judge criminal, and we therefore require you to retract from them. But this neither the promoter, nor my judges did; and why not? The reaſon is obvious: becauſe their purpoſe was not to reform, but to puniſh; not to reclaim, but to get rid of me. The promoter and his cabal had agreed, that puniſhment ſhould be inflicted without my being offered the opportunity of retracting.

Let me ſee, then, what are the errours which they pretended to article againſt me; and what ought to have been the recantation propoſed by my judges:

1. I am firſt accuſed of having defamed the liturgy of the church of England. It is almoſt ſufficient to reply, that this has nothing to do with the ſtatute de concionibus: yet, ſuppoſe it had, what ought to have been the language of the court? You have defamed the liturgy; you have maintained it to be inferiour to other rituals; and we require you, in expreſs words, to acknowledge your fault, and to retract from ſuch poſitions. Why, Gentlemen, was this not done? becauſe I had plainly ſaid in my defence, that I had read many liturgies, and ſcrupled not to declare, that, taking it altogether, the liturgy of the church of England was the beſt eſtabliſhed liturgy I had

ever

ever ſeen. They well knew that ſuch a recantation I might have ſigned at once, without the ſmalleſt ſcruple: it was my real opinion, formed, not, as my accuſers take up their notions, without reaſon or examination, but upon much reading, and ſerious enquiry.

2. I am next charged with having called the church of England idolatrous; if there was any meaning in the article, what ought to have been the form of recantation? ſimply this: You have aſſerted that the church of England is idolatrous, we require you to diſclaim that aſſertion, and to acknowledge that it is not. Gentlemen, my accuſers could not ſeriouſly make ſuch a propoſal to me; becauſe they muſt know, that through the whole of the work the aſſertion had never been made. I declared in my defence, and I repeat it now, that I never called it idolatrous. The charge is a lie. They were afraid to put my vindication on that ground. The queſtion is not now, whether I am, or am not the authour of the pamphlet: but whether in any part of the pamphlet the church of England is ſaid to be idolatrous: if it were, I again inſiſt that I ought to have been required to retract from the aſſertion, and warned of the ſtatutable puniſhment, if I would not. Gentlemen, the whole of this accuſation aroſe from the ignorance of theſe wretched men, unable to compare the different forms of worſhip which prevail in different churches in Chriſtendom; they imagined that, what was ſtrictly true of the greater part of them, muſt be meant of all. Does then the church of England aſſociate with the worſhip of the ſupreme God, the worſhip of created beings‡? Who ever ſaid, or ſuppoſed this? I never did. Had the writer of 'Peace and Union,' or any other perſon ſaid ſo, that is nothing in this caſe; I do not think it, and indeed it was never advanced by me. Is it not then very extraordinary, that of two errours imputed to me, I do not in fact maintain either?

‡ See note p. 126.

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3. The third errour articled againſt me is, that all eccleſiaſtical courts, ranks, and titles, are repugnant to the ſpirit of chriſtianity: this alſo is an infamous lie: I never ſaid this, nor ever thought it. I leave the cabal, and the judges, to reflect that I pronounce the imputation to be an infamous falſehood: there is no ſuch ſentence in the pamphlet from which they pretend to have extracted it. The word 'are' is put in, and the word 'hence' left out; and ſuch inſertions and omiſſions of words, ſuch perverſions and diſtortions of meaning, ariſe from the moſt abominable wickedneſs: it is infamous treachery. Gentlemen, you muſt pardon me, if I am warm upon this occaſion; it is not myſelf, but the univerſity and its members that I am protecting againſt the intrigues of judges, managers, and caballers. I ſaid plainly in my reply to this charge, that eccleſiaſtical courts, ranks, and titles, are not all repugnant to the ſpirit of chriſtianity. I produced from ſcripture expreſs examples; whoſe authority I willingly acknowledged, and whoſe expedience I readily ſaw. But ſuppoſe that I had ſaid all which I have been miſrepreſented as ſaying, here again the mode of proceeding, ſuch as the ſtatute required, was plain and obvious. The vice-chanceller ſhould have ſaid: You have maintained all eccleſiaſtical courts, ranks, and titles, to be unchriſtian: it is an errour—will you retract from it? if not, you muſt be baniſhed. Why was this not put to me? I anſwer: becauſe my enemies knew that I ſhould at once have anſwered, ſuch an aſſertion is indeed an errour: it cannot be maintained: I do moſt willingly diſclaim it.

Can any thing more be wanting to ſtrengthen the proofs of their malice? Is this juſt judgement? Is this the conduct of an equitable and upright judge? No, Sir, it is wickedneſs—wickedneſs of no common kind, nor ſuch as ordinary men are ſubject to: it is not ignorance, but paſſion—deliberate, abominable paſſion—the reſult of malice

lice and hatred, the project of vicious minds, warpt by the desire of gaining infamous preferment. Who can hear of such proceedings, without pronouncing them abominable, shameful, scandalous!

I have been punished for a breach of statute of which I am not guilty: if I had been guilty, and had not retracted, then indeed in the proper place I might have been subjected to the sentence decreed.

4. The last errour charged against me is, that I have profaned the most holy offices of the church. But here again the law on which I was tried is totally silent: the statute de concionibus says not a syllable on this head. If therefore I had been guilty of either profaning or ridiculing the offices of the church, it must be upon some other law that I ought to have been tried, and to some other punishment that I ought to have been subjected. But the fact is, I denied the whole. The offices of the church of England are no where reviled in the pamphlet called Peace and Union; nor did the promoter, when challenged by me to support his accusation, produce a single instance in which I had offended. But suppose that I had been proved guilty of this article: what ought to have been the conduct of wise judges, and benevolent men? Had they been actuated by the love of justice, they would have produced a form of recantation in this particular, and I must either have subscribed to it, or submitted to the consequence. In short, the recantation proposed to me, ought, in commou equity, and plain sense, to have been founded on the several particulars articled and proved against me. But the judge and the cabal had formed a very different project: without any regard either to the forms or the essence of justice, their sole view was to punish. This was the ground of their first resolution; not a voice at the meeting was found dissenting, though Icould at this moment produce evidence,

that,

that one at leaſt of the original twenty-ſeven had never ſeen; and I have reaſon to believe, that numbers of the reſt had never read the book.

Theſe are a few of the gravamina under which I have ſtruggled, againſt an iniquitous and malicious proſecution. The laſt alone is ſufficient to ſet aſide the ſentence; it comes home to the point, that my judges in fact never propoſed the alternative which the ſtatute requires, and without which no ſentence could be enforced.

The vice-chancellor is miſtaken in ſuppoſing me obſtinately attached to my opinions: ſince I ſhall never refuſe to retract any errour of which I am fairly convicted. But the reaſons muſt be given by my oppoſers: I muſt be induced by argument, not by compulſion: and I again affirm, that no opinion of mine has been attempted to be refuted, nor any poſition ſtated which I had an opportunity of retracting.

XIV.

As the publiſhing or writing of a book does not come amongſt the offences ſpecified in the ſtatute de concionibus, ſo no inſtances have ever occurred of any perſon being puniſhed under that law, for writing a book, but only for maintaining viva voce, in a publick univerſity-exerciſe ſome point or doctrine ſpecifically reprobated in the ſtatute. But had not the ſilence of the law been ſufficient, the practice of the univerſity is deciſive againſt my being brought to anſwer for any thing advanced in a printed book. Is not this then a ſingular and moſt oppreſſive grievance, that I ſhould be the only perſon ſelected out by malice and ignorance to become the victim of intrigue, and to ſuffer by an obſolete law on which no perſon before had been ever proſecuted, and all this too

in

an age which has been called by ſome perſons an enlightened age? This however is an errour with which I cannot be charged. I have not called it an enlightened age, nor ſhall I eaſily be induced to call it ſo, while ſuch a cabal and ſuch judges can be found to exiſt in it. Men, who could put into my hands ſuch an infamous and pitiful paper as no perſon of letters could write, nor any man of common honeſty ſubſcribe. Yet theſe perſons are the guardians and inſtructers of our youth, and expected to ſupport by their examples, the intereſts of literature and the dignity of religion. Thanks to God! We have had ſo few as the twenty-ſeven capable of ſuch conduct. The univerſity has not loſt its character for liberality and learning. I have received marks of friendſhip innumerable from men of the moſt diſtinguiſhed character amongſt us, ſuch as are ſufficient to redeem us in the opinion of the publick. In behalf of men like theſe I have always vindicated the maſters of arts: they are not all favourers of theſe wicked and abominable proceedings, they are not all involved in the charge, they are not all bigots, perſecuters, and inquiſitours. There are numbers of men amongſt us very different from the promoter and his cabal. I am proud to acknowledge the particular countenance, which has been ſhewn me by clergymen of the church of England, and by gentlemen highly reſpected in the law, who have expreſsly and repeatedly declared their abhorrence of theſe practices: they all conſider it as a great grievance to me to be the only perſon ever brought to anſwer for an action which neither the law forbids, nor has the court authority to puniſh. Upon the whole, what I have hitherto ſaid relating to the fact, may be reduced to one very ſhort ſtatement; there was no evidence before the court on which my judges could pronounce me guilty of even publiſhing the book; there was no proof of any thing criminal contained in it; nor, if there were, was that crime cognizable in the court which tried it.

XV.

After ſix long days however, the vice-chancellor undertakes to declare that he is ſatisfied of my guilt, and that the heads concur in the ſentence; but there is a very material defect in form. It does not appear from this, that the heads were all ſatisfied of my guilt: they concurred indeed in my ſentence; but it does not follow, that they thought I deſerved it. In both points their concurrence ought to have been declared; and the want of this declaration affects the whole.

But ſuppoſing the form to have been good, let it be conſidered only for a moment, how extremely diſgraceful this mode of checking the freedom of inveſtigation muſt be, in a place devoted to the purpoſes of literary improvement, how utterly inconſiſtent with the very end and deſign of our inſtitution. If falſe or dangerous opinions may be any where produced, where can they be uttered with ſo little effect as in the midſt of perſons, qualified at once by ability and zeal, by reaſon and argument, to expoſe their fallacy, and to repel their danger? Such, Sir, are the modes naturally to be expected from literary men; and ſuch ought to have been the mode adopted by the men who caballed againſt me. Let the promoter, Sir, or any of his party, write a book, containing ſentiments which I feel myſelf intereſted to oppoſe: I here engage, that I will not make a party in the univerſity to rouſe the indignation of the vice-chancellor and the heads againſt him; I will anſwer it by argument and reaſon; and if my objections are replied to, will vindicate their ſtrength, or acknowledge my miſtake.

Having ſtated theſe grievances to you, gentlemen, I requeſt that you would take them into your ſerious conſideration, and on account of each ſeparately, and all conjointly, I deſire that the ſentence of the vice-chancellor may be reverſed, as totally unfounded in law. As a maſter of arts of this univerſity, I can only be puniſhed by the ſtatutes of the univerſity: as an engliſhman, I am ſubject to no puniſhment but by the direction of the laws of the land.

Amenable as I know myſelf to be to theſe laws, and ſubmiſſive as I ſhould have been to legal juriſdiction, legally exerciſed, I never will ſubmit to any puniſhment in this country, not authoriſed either by the ſtatutes under which I am tried, or by the laws of the land. It is on this ground that the liberty of Engliſhmen ſtands, that the proceedings againſt a man accuſed muſt be open, and that his trial muſt be by law. Even in thoſe caſes, where juries are not admitted, ſtill he muſt be tried by law; and there is not a maxim in life which I would more particularly enforce than this; that law, law muſt be the ground and guide of all our civil conduct. And here I cannot forbear congratulating that part of my audience, who, by their ſituations, are exempted from any reſponſibility to juriſdictions like that under which I have been tried. Let them think themſelves happy that they can be tried only by the known laws of their country, by courts legally eſtabliſhed, and the verdict of a jury. Yes; I do declare, that for any offence, of whatever kind, I would rather ſubmit my cauſe to any jury of twelve men, in whatever manner, or from whatever ranks impannelled, than to a ſet of judges, however qualified by learning or abilities, who can yet think themſelves at liberty to act in the unprecedented and unwarrantable manner of the vice-chanceller's court. Much as I value the diſtinction of a maſter of arts of this univerſity, I feel myſelf infinitely

more happy as an engliſhman, that I cannot be puniſhed but by law. I cannot be impriſoned: I cannot be baniſhed from my native country, but by a jury: and if I am to be puniſhed after a verdict found by a jury, ſtill that ſentence muſt be according to law. In my caſe, the ſentence was not according to law; for no recantation was propoſed from the pretended charges, becauſe they knew that I might have ſigned it without the leaſt heſitation.

I cannot conclude, without again declaring that in theſe proceedings I have all along conſidered myſelf as acting, not merely on my own account, but in behalf of every member of the univerſity: that we may none of us hereafter be expoſed to the inconvenience and obloquy, that I have laboured under for many months; be withdrawn from our ſtudies to anſwer the cavils of malice and impertinence; or be in danger of ruin from a factious cabal, compoſed, for the greater part, of men intriguing for preferment, or led away by bigotry and fanaticiſm.

Here Mr. Frend ended: and Sir W. Wynne aſked Dr. Kipling, if he had any thing to offer in reply to Mr. Frend.

Dr. Kipling. I have heard nothing that requires any reply. I leave it all to the court.

Mr. Frend here deſired that Dr. Kipling would repeat what he had ſaid, as he had heard him very imperfectly.

Dr. Seale to Dr. Kipling. I beg you will repeat what you ſaid juſt now.

Dr. Kipling. I am willing to ſubmit the whole to the court.

Frend. The promoter, then, has nothing to obſerve on any of the charges.

Dr.

Dr. Kipling. No, not any thing I have nothing to ſay.

Frend. I believe ſo.

The court was then adjourned till after the congregation in the afternoon.

FOURTH COURT.

Before the right honourable and right worſhipful William Wynne, &c. between the hours of ſix and eight in the afternoon of the 29th day of June, &c.

THE judges of this court affirmed the ſentence of the court below, as follows: Whereas by grace of the univerſity dated 14th June 1793, William Wynne, knight, Dr. John Hey, Dr. Seale, Edward Chriſtian, maſter of arts, and John Lane, maſter of arts, were appointed judges delegates in a certain cauſe of appeal or complaint between William Frend, maſter of arts, and fellow of Jeſus college, in this univerſity, party appellant, or complaining, on the one part, and Thomas Kipling, doctor in divinity, party appellate and complained of, on the other part, We the ſaid William Wynne, John Hey, John Barlow Seale, Edward Chriſtian, and John Lane, having taken the ſaid cauſe into our ſerious conſideration, after having examined the ſeveral proceedings had therein before the right worſhipful Iſaac Milner, doctor of divinity, vice-chancellor of this univerſity, which have been tranſmitted to us; and having heard the arguments urged by the appellant in ſupport of his appeal, Do by this definitive ſentence pronounce againſt the ſaid appeal made and interpoſed in this behalf; and that the judge from whom the ſaid cauſe is appealed, hath acted rightly, juſtly, and lawfully.

lawfully. And we do hereby affirm the ſentence pronounced by him in the ſaid cauſe.

(Signed) William Wynne.
John Hey,
John Barlow Seale.
John Lane.
Edward Chriſtian.

The buſineſs of the congregation in the ſenate houſe being ended, and the court aſſembled in the law ſchools, Sir William Wynne roſe, and ſpoke to the following purpoſe:

I am directed by the reſt of the delegates to give ſentence in this caſe as our unanimous opinion. It was a caſe originally inſtituted in the vice-chanceller's court, in which Mr. Frend was ſummoned by citation to appear before the vice-chanceller and aſſeſſors, for violating the laws of the univerſity, particularly the ſtatute de concionibus. (Here the words of the citation were quoted.)

To this citation Mr. Frend appeared before the vice-chanceller and eight heads of colleges, and the commiſſary. Mr. Frend excepted to their juriſdiction as a court, and delivered in a proteſt. (Here the words of the proteſt were recited.)

This proteſt was taken into conſideration by the vice-chanceller and his aſſeſſors; and the vice-chanceller pronounced for the juriſdiction of the court: and we are of opinion that the vice-chanceller was right. The proteſt goes upon the aſſumption, that the two courts are diſtinct juriſdictions: for which we find no authority either

in

in the ſtatutes, or the practice of the univerſity *. For the new regulations by queen Elizabeth, require no new court: the ſtatute which directs that the vice-chanceller ſhould not proceed in certain caſes without the concurrence of the heads, is only a regulation of the court; it makes no alteration in the court itſelf. The addition of a certain number of perſons authoriſed to ſit with the vice-chanceller in certain caſes, is no alteration of the court, except only in that particular expreſsly mentioned by the law. Something ſimilar to this may be obſerved of other courts of law eſtabliſhed in this country. The court of King's Bench has varied at times the number of its judges; but no alteration took place, either in the court itſelf, or the mode of its proceedings. The court of chancery, if neceſſary, calls in others as aſſeſſors: yet no alteration is thus made either in this court or its proceedings. In the court of admiralty, in caſes of damages, aſſeſſors are called in, and pilots ſit with judges and delegates. Theſe, however, make no alteration in the nature of the court, but are added merely as adviſers. So in the preſent caſe, although the heads joined with the vice-chanceller in giving ſentence, they make no part of the court: nor do we ſee any ground for the diſtinction pretended between the authority of the vice-chanceller's court, and that of the vice-chanceller and heads of colleges. Mr. Frend has objected that the concurrence of the heads was neceſſary in the whole of the proceedings as well as in giving ſentence. The ſtatute de concionibus requires no ſuch thing: the words of the ſtatute are not cancellarii et præfectorum juſſu, but cancellarii juſſu cum aſſenſu majoris partis præfectorum: theſe words are materially different, and the vice-chanceller has clearly by this ſtatute a right to proceed without the concurrence or aſſent of the other

* The proof is, that theſe two courts are formed on a very different plan; the one is ſecret, the other open: in the one, an oath can be legally adminiſtered; in the other, it may be refuſed.

heads

heads till he comes to the ſentence itſelf. To this indeed their aſſent is required: but to nothing more. In whatever manner or however they may be qualified, they are authorized to give it, whether the evidence was delivered in their preſence, or they were informed by the vice-chanceller, no one can diſpute the ſentence. This being the caſe, I conceive that no objection can lie againſt the maſter of Trinity's abſence on ſome days of the trial. So long as he aſſented to the ſentence, it was not neceſſary for him to be preſent at the whole of the proceedings: however deſirous he might be to get the beſt information, it was not eſſential to the giving his aſſent that he ſhould have perſonally attended at the trial. Mr. Frend obſerved further, that the juriſdiction of the vice-chanceller's court and that of the vice-chanceller and heads muſt neceſſarily be different, as there can be no appeal from the vice-chanceller and heads to the ſenate: now this is odd as he has himſelf appealed from them as vice-chanceller and heads, to the ſenate, and we ſit here in conſequence of that very appeal *. On theſe grounds his renunciation of their authority was over-ruled by the vice-chanceller: and the delegates think that he acted rightly.

The charges were then read, particular paſſages recited from the pamphlet, and the grace of 1603, and the ſtatute de concionibus referred to. Dr. Kipling then called witneſſes, which was objected to by Mr. Frend till the ſecundus dies juridicus, and he grounded his objection on a part of a grace paſſed 1609. But in another part of the very ſame grace the judge is expreſsly allowed a more ſummary mode of proceeding.

* Mr. Frend did not appeal from the vice-chanceller and heads but from the vice-chanceller's court, proclaimed, adjourned, and diſſolved, in the uſual forms, after the grace of 1603 had been diſpoſed of.

(Here

(Here Sir W. Wynne quoted the words 'niſi cauſæ ſint leviores et ordinariæ in quibus poteſt judex ſtatim, &c.) But whether the cauſe be levior or longior ſeems left entirely to the direction of the judge, and by virtue of that direction, the vice-chancellers have in all caſes of late ſummarily proceeded *: and that the party accuſed might, however, have no juſt cauſe of complaint for want of time, a ſufficient interval was allowed †. By the grace, indeed, it appears, that in deciding what are to be conſidered as leviores cauſæ, the judge may uſe a diſcretionary power, and may proceed ſummarily upon them; this has been confirmed by long practice; and it does not appear that the proceedings in the vice-chancellor's court have been carried on by examination of witneſſes upon allegations, and interrogatories, and ſubſequent publication. Witneſſes were in conſequence examined. Mr. Frend objected to the evidence of Mr. Kilvington and Mr. Lloyd, on the ground of their being accuſers, and concerned in the proſecution ‡. And had it appeared that theſe gentlemen had any intereſt in the cauſe, eſpecially in the coſts of ſuit, or any previous diſpute or quarrel with the party, or any malice againſt him, theſe are circumſtances, which, though they would not have rendered them incompetent as witneſſes, yet would have made againſt the credit to be given them. But there appears no reaſon for ſuggeſting any thing of this kind againſt them. Their publick reſentment of the pamphlet affords no ground for objection; their indignation appears to have been, not againſt the perſon, but

* Levior, or longior—inſidious contraſt, taking the very diſtinction for granted.

† Mr. Frend did not accept it as an indulgence, but a legal right.

‡ Grounds of objection to Kilvington and Lloyd, were not the ſame.

his publication: they were therefore ſtrictly allowable as witneſſes; and the evidence they gave ſeems impartial and clear. The ſame objections were ſuggeſted to have been made againſt other witneſſes*, but theſe not appearing on the minutes of the court, I call them barely ſuggeſted no evidence appeared of their having been made, and therefore no weight was allowed them †.

Mr. Frend's next objection was, that the queſtions and anſwers which were taken down by the regiſtrary, ought to have been kept in the court, but that they were taken out of court, and put into the poſſeſſion of the promoter. As the fact has not been controverted, we muſt conſider it as admitted. At ſome period, the proceedings muſt go into the hands of all the parties: Mr. Frend muſt have had copies given to him, at what time I do not know ‡. But the objection is taken up on that radical maxim, that no evidence ſhall be communicated before publication §. If this had been a cloſe examination, then indeed it would have been a fatal proceeding ||. But this was an examination in open court, taken down in the moſt deliberate manner, by the proper officer, and might alſo have been taken down by the promoter, or any of his friends. It was therefore indifferent in what manner the promoter

* The ſame objections were not made to all the others.

† But evidence was offered on oath, and rejected; though the extraordinary oath of the regiſtrary was taken.

‡ There was no objection to copies of evidence being ſent to all the parties; but to the original being given to the promoter before any copy had at all been taken.

§ It was not on this maxim that the proteſt was grounded, but on the fact quoted in the caſe.

|| The caſe was not concerned with cloſe examination, it was in publick court, before a jury: this is therefore a moſt groſs and wilful perverſion.

came

came by it; whether the originals came into his hands; if thoſe originals underwent no alteration there, and that they did not, has been ſworn to by the regiſtrary. But Mr. Frend objected alſo to the mode of taking the depoſitions at various times. It would, to be ſure, have been more regular, if the depoſition of each witneſs had been taken all at once: but it is no unuſual thing in courts of law, by leave of the court, to have up evidence at different times. I remember one inſtance, in a particular trial, where a witneſs having ſaid what he had not meant, the cauſe was reſcinded, to take the depoſition of that witneſs again. Mr. Frend objected next, that ſeveral leading queſtions had been aſked, but the inſtances did not appear to us to be of ſuch a nature as to juſtify the complaint. One witneſs was called and reminded what he had ſaid before. (Here Bowtell ſenior's evidence was referred to 'You told the court, &c.'). I do not apprehend that to be a leading queſtion *. An examination conducted in a court familiarized to legal proceſſes, might perhaps have been carried on in rather a more proper manner in point of regularity; but to this I make one general reply: the inexperience of the parties who conducted the proceedings, and of the court in which they were carried on. It would be a very unhappy thing, if the members of this univerſity were converſant in matters of this nature. If it appears that in this caſe they have conducted themſelves with caution, and uſed every means in their knowledge, little regard ought to be had to objections of informality and inexperience; and, I muſt ſay, I never ſaw depoſitions taken with greater impartiality, or witneſſes appear with † leſs forwardneſs to

* Leading queſtions confounded with reminding evidence, which are diſtinct grounds of complaint in the proteſt.

† Leſs forwardneſs. See the evidence of Meſſieurs Lloyd and Kilvington.

ſupport the charge, than in the preſent caſe. But there is yet one objection, the vice-chanceller's rejection of an appeal to abſolution in bar of ſentence. I think it very evident, that the occaſion and the offence conſidered, the vice-chanceller could do no otherwiſe than reject ſuch an appeal. There are many of the old ſtatutes, by which excommunication was uſually inflicted on many offences not now thought deſerving ſo ſevere a cenſure. To avoid hurting tender conſciences in thoſe days, abſolution was pronounced at the end of every term: but that this proviſion ſhould be conſtrued to extend to offences ſtated to be contrary to the ſtatutes, can never be allowed*: the proteſt, therefore, being grounded only on very ancient uſage, was very properly diſmiſſed, and the vice-chanceller acted perfectly right.

Mr. Frend has this day urged as a matter of the greateſt conſequence, that the whole cauſe originated in maliciouſneſs †; and he ſpoke of the promoter, and of the perſons concerned with him, in terms which nothing could excuſe but his unhappy ſituation: but I truſt that on reflection he will be ſincerely ſorry for the expreſſions he has made uſe of. It is ſufficient for us to ſay the charge is not relevant at all; courts do not enquire into motives of a proſecution: it is impoſſible for them to be aſcertained; and if it could be done, it could not weigh on the guilt, or the innocence of the party accuſed; theſe

* Offences contrary to ſtatute are expreſsly included in the abſolution; and enormous offences are forgiven, ſince the culprit is reſtored Deo et eccleſiæ.

† A charge of malice is material in an appeal on account of grievances; and what could be a greater one than that the judge and accuſer ſhould be guided by the ſame bad motives. Dr. Wynne does not anſwer Mr. Frend's proofs of malice. What became of them?

muſt depend on the real merits of the cauſe, and the facts actually proved in the courſe of evidence.

In the firſt place, then, it appears, from the name of Mr. Frend in the title page, that he was the authour of the pamphlet: this indeed goes but a little way; and though the preſumption, which it affords, remains till it be removed, yet, for legal proof, it muſt be allowed that great confirmation is wanted. In the evidence of Hodſon, ſuch circumſtances occur as leave little room to doubt; yet even this evidence is ſlight, compared with what appeared on ſubſequent enquiry; the evidence of Bowtell, and the correſpondence with Mr. Watſon. In theſe notes, Mr. Frend does over and over again ſpeak of this pamphlet and the appendix as his: indeed he ſeems to have exerted more activity than is uſual in a common publication *. The only queſtion now remaining is whether there be any thing in the pamphlet which comes under the ſtatute de concionibus †. The modes of uttering expreſsly prohibited in this ſtatute are, preaching, common-placing, and publick lectures; but theſe are not all: the ſtatute evidently goes farther, and includes much more in the expreſſion, 'aut aliter publice.' The only queſtion is, whether the printing and publiſhing of a pamphlet does come within this clauſe? Mr. Frend contended, that 'aliter publice' muſt refer only to ſome mode of publication, of the ſame kind with thoſe before particularly deſcribed, and cannot apply to any doctrine, or poſition, not maintained and ſupported viva voce. But I do not apprehend that this could be allowed, in the ſtricteſt way of interpretation; and we muſt conſider the

* This is falſe: the only pains, Mr. Frend took, were to ſee that his books were ſent to the bookſellers.

† This is not the queſtion, but whether the vice-chanceller's court had ſufficient proof of this? The delegates are here on new ground and a freſh trial.

ſpirit

ſpirit of the ſtatute, and the miſchief which it was intended to prevent*. It is certain, that publiſhing by printing is more ſtrong, more extenſive, than by any viva voce declaration; in theſe circumſtances, the pamphlet proved is ſuch as oppoſes what the ſtatute forbids to be oppoſed, and is therefore comprehended in it. Of the particular parts and paſſages in this pamphlet, I ſhall take notice of only three.

1. In page thirty-nine alone, there is language ſufficient to juſtify the ſentence we are about to give†. 'Hence eccleſiaſtical courts, eccleſiaſtical ranks and titles, eccleſiaſtical dreſs, all repugnant to the ſpirit of chriſtianity.'

It has been ſtated by Mr. Frend, that this paſſage was not fairly quoted; and he denies that any ſuch meaning, as the promoter has given to it, can be inferred from the original; but we think the meaning is clearly determined from the context: 'the chriſtian world,' ſays the author, in the ſame page, &c. to 'concerns.' Hence—Now, I think, in all plain conſtruction, this clearly implies the ſenſe given to it by the promoter; and if ſo, how it can be ſaid that they are not againſt 'aliquem ſtatum et gradum, I do not know: at the cloſe of the paſſage they are all pronounced 'repugnant to the ſpirit of chriſtianity; and the writer of ſuch a paſſage muſt be proved guilty of the charge.

* Judges ſhould be leſs fallible than Dr. Wynne and his brethren, to be allowed to decide on the ſpirit of a law.

† The delegates find three paſſages: but how do they know, that theſe were the paſſages obnoxious to the ſtatute, in the eyes of the vice-chanceller and heads? What right had the delegates to look out for obnoxious paſſages? They could be concerned only with thoſe which Mr. Frend was ordered to retract; but ſuch paſſages were not pointed out in the proper court.

2. It

2. It goes on, ‘ A man, if a prieſt or miniſter enters, is not maſter of his own houſe; he muſt not thank god for the bleſſings of providence at his own table; he cannot pledge his faith to a lovely woman without the interference of the prieſt; his offspring muſt be ſprinkled by ſacred hands; and at death he is not committed to his long home without another ſpiritual incantation.’ Now, how words could be pronounced more injurious to the clergy of this kingdom than theſe, I cannot ſee. The laity are called brute beaſts, for tamely ſubmitting to this uſurpation; and therefore I cannot but think that the writer muſt mean to oppoſe the degrees and ranks eſtabliſhed by the church of England.

3. The latter end of the page ſpeaks of the * ſacred offices of marriage, baptiſm, and burial, as incantations: we are therefore clearly of opinion, that the vice-chanceller was well founded in calling upon the party to recant. It has been alledged by Mr. Frend, that he was not called upon to recant, in virtue of there being no particular errours or paſſages ſpecified in the form preſcribed; but in fact he was called upon to recant—the form is before the court, and is as follows. (Here the form of recantation was read.)

Now Mr. Frend's aſſertion reſts on this: that the recantation propoſed, did not contain any particular ſpecification; but we are of opinion, that, if any paſſages whatever are to be found in the pamphlet, which go againſt the ſtatute, the requiring of him to retract from the book which contains ſuch paſſages, is ſtrictly proper †.

* Marriage a ſacred office! pity that he did not call it a ſacrament!

† The enquiry before delegates was not, whether Mr. Frend's pamphlet was any where faulty, but whether the judges who condemned were right: and they pointed out no paſſages.

Now,

Now, I have pointed out three paſſages, in which the pamphlet does expreſsly controvert the proviſions in the ſtatute. The form, therefore, was proper; beſides, by that ſtatute, the party is obliged to conform in whatever manner the vice-chanceller ſhall direct 'eo modo quo illi preſcribitur.' The party had no pretence to dictate the manner in which he was to make his recantation, but was obliged by the ſtatute to conform to that mode which the vice-chanceller ſhould preſcribe. This mode was legal and proper; and we do therefore agree, that in this, and in every part of the proceedings, the vice-chanceller did right, and we do therefore affirm the ſentence.

Mr. Frend now demanded a copy of the ſentence; and the court was diſſolved: but before the delegates left the ſchools, he roſe, and ſaid: I deſire it may be underſtood, that my preſent intention is to appeal from this unjuſt ſentence, to the court of king's bench, where I hope every engliſhman will meet with juſtice.

APPENDIX.

APPENDIX.

N° I.

De cauſis forenſibus. Cap. 48.

Stat. reg. Eliz. An. 12mo. ed.

OMNES cauſæ et lites quæ ad univerſitatis notionem pertinent tam procancellarii quam commiſſarii judicio ſubjiciantur niſi procuratores vel taxatores academiæ aut eorum aliquis vel magiſter artium aut qui ſupra illum fuerit alter litigantium ſit: tunc enim procancellarii ſolius erit juriſdictio niſi in nundinis Sturbrigienſibus et iis quæ ad feſtum ſancti Johannis baptiſtæ apud Barnwell tenentur. Finem autem accipient infra triduum ſi fieri poteſt omni juris ſolennitate ſummota. A ſententia commiſſarii ad procancellarium appellabitur infra viginti quatuor horas poſt latam ſententiam. A procancellario autem ſive lis coram eo cœpta ſit ſive per appellationem ad eum devoluta ad univerſitatem provocatio fiet infra biduum a tempore latæ ſententiæ et non poſt ſuamque appellationem intimabit appellans alteri procuratorum infra triduum latæ ſententiæ. Ille vero ſtatim nomine academiæ judici a quo inhibebit ne quid pendente appellatione attentare vel innovare preſumat prius tamen duobus ſolidis honorarii loco ab appellante acceptis nec non viginti ſolidis apud eum depoſitis appellanti reſtituendis ſi juſtam foviſſe cauſam probetur vel in uſum academiæ convertendis ſi temere appellaſſe convincatur aut ſi poſt

datos judices a profecutione ceſſaverit vel culpa ſua cognitio differatur. Cauſæ appellationum ad univerſitatem ultra decem dies ſi fieri poteſt poſt datos judices non protrahantur nec ſecunda provocatio omnino admittatur. Judices delegati tres ad minimum nec plures quam quinque pro qualitate cauſæ in omni appellatione dabuntur et ſententiæ majoris partis illorum ſtandum erit. Poteſtas autem nominandi judices ſit penes quinque illos viros qui pro capite illius anni conſtituti ſunt et duos procuratores. Et qui a majori parte iſtorum nominati fuerint ad regentes et non-regentes deferentur ſuffragiis ſuis eligendi ſi placent eis alioqui mutatis uno vel altero alii eorum loco per dictos ſeptemviros ſurrogati proponentur eligendi. Et ſi hi quoque diſplicent ſimiliter tertio fiet. Quod ſi nec tertio loco poſiti eligantur licebit dictis ſeptemviris aut eorum majori parti pro illa vice tantum delegatos judices eligere et dare. Et ſi major pars ſeptemvirorum vel in nominandis judicibus vel in eligendis illis (quando electio ad eos devolvitur) non conveniant tunc plures numero prævalebunt licet majorem partem vel æquam habita ratione totius numeri non efficiant.

N° II.

Stat. De concionibus. Cap. 45.

NULLUS concionator ſit vel aliquam concionem pro gradu ſuo habeat niſi ad minimum diaconus ſit. Octavo maii ad Henrici ſeptimi commendationem ſacra concio ſit quam regius in theologia profeſſor faciet. Pridie unius cujuſque termini concio latina hora nona antemeridiana in eccleſia beatæ Mariæ habeatur. Primo termino anni concionabitur regius profeſſor in theologia: ſecundo profeſſor dominæ Magaretæ: tertio concionator academiæ. Unoquoque die dominico de anno in annum conciones in academiæ templo fiant. Ordinem eundem collegiorum

orum in concionibus conſervabunt quem in diſputationibus præſcripſimus incipiendo a ſenioribus qui concionatores ſunt in unaquaque combinatione et ſic progrediendo ad juniorem. Qui curſum ſuum concionando omiſerit viginti ſolidis mulctabitur.

Collegia pro ſingulis concionibus ſolvent bedellis quatuor denarios niſi quis pro gradu concionatur. Concionatores autem in concione ſua utentur caputio uſitato non-regentis ſub pœna ſex ſolidorum et octo denariorum quoties deliquerint.

The latter part of this ſtatute is inſerted in p. 169.

N° III.

Grace paſſed on June 9. 1603. ſpecified in the articles.

PLACET vobis ut quicunque doctrinam vel diſciplinam eccleſiæ Anglicanæ vel ejus partem aliquam legibus publicis ſtabilitam ſcriptis vel dictis vel quocunque modo in academia Cantabrigienſi publice oppugnaverit ab omni gradu ſuſcipiendo excludatur et a ſuſcepto ſuſpendatur ipſo facto.

N° IV.

Grace paſſed in the year 1609, to regulate judicial proceedings.

CUM ſtatutis academiæ noſtræ cautum ſit ut omnes cauſæ in aliqua curia univerſitatis motæ omni juris ſolemnitate ſemota et ſola facti veritate inſpecta debite terminentur infra triduum (ſi commode fieri poſſit) quæ quidem ſtatuta (inter alia) quilibet advocatus procurator et alii omnes ſeſe ad poſtulandum gerentes in curiis prædictis virtute juramenti ſtricte tenentur obſervare quibus

tamen non obſtantibus jampridem omnes pene lites coram procancellario et commiſſario univerſitatis noſtræ inceptæ potius in triennium quam triduum prorogantur in manifeſtam privilegiorum et ſtatutorum noſtrorum violationem honoris et juriſdictionis academiæ ſcandalum et opprobrium et litigantium vexationem ac diſpendium

Placet igitur vobis ut ſubſequens ordo in omnibus et ſingulis cauſis poſthac in curiis univerſitatis motis ſeu movendis ſtricte obſervetur viz.

Imprimis arreſtetur reus ſi poſſit apprehendi ſi non poſſit fiat citatio peremtorie viis et modis. Reo capto ſeu bonis ſuis ex primo decreto ſalva cuſtodia cuſtodiatur donec fidejubeat coram academiæ regiſtrario vel ejus deputato ſe compariturum proximo die juridico ex tunc ſequenti et ſic poſtea quolibet &c. Reo autem non comparente ſtatim luant fidejuſſores ſine favore. Inſuper juxta tenorem ſtatutorum academiæ noſtræ principales perſonæ factum ipſum per ſe proponant videlicet actor per ſe ſuam actionem et reus ſuam defenſionem nec defenſores vel procuratores admittantur pro eiſdem niſi adverſa valitudine vel alia legitima cauſa per dominum procancellarium approbanda ſint detenti quominus in judicio ſuam præſentiam poterunt exhibere de quibus in principio coram domino procancellario vel commiſſario vel delegatis judicibus fidem faciat juramento: quo præſtito et cauſa utrinque declarata et non antea admittantur. His omnibus ſic ut præcipitur factis et obſervatis primo die juridico detur materia ſive fiat facti declaratio: fiat etiam litis conteſtatio et præſtet reus juramentum de fideliter reſpondendo et moneatur ad ſubeundum examen infra triduum (niſi cauſæ ſint leviores et ordinariæ in quibus poteſt judex ſtatim tam partes principales quam teſtes ſi quos præſentes habeat publice interrogare et examinare de veritate facti et omni ſolennitate prorſus ſemota cauſam ſtatim finaliter determinare) ſed utcunque triduo

elapſo

elapſo vel antea (ſi fieri poſſit) habeat actor copiam reſponſi ut videat an opus habeat ulteriori probatione et ſciat quid ultra ei faciendum habeat etiam ad probandum in proximum et poſt triduum exeat compulſorium pro teſtibus.

Secundo die juridico veniat actor paratus ad probandum et teſtes ſuos producat ſi quos habeat. Teſtes judex in levioribus et ordinariis cauſis poteſt ut ſupra publice interrogare de veritate materiæ ſive allegationis et ſtatim cauſam finaliter determinare. Sin cauſa longior ſit et altiorem examinationem requirat habeat reus biduum pro interrogatoriis et intra principium tertii diei et diem proximum juridicum examinentur teſtes tam ſuper materia originali actoris quam ſuper interrogatoriis per reum datis.

Tertio die juridico publicentur dicta teſtium et aſſignetur ad ſententiam in proximum et proximo feratur ſententia niſi reus velit excipere: ſi velit detur reo proximus ad excipiendum: quo die adveniente reſpondeat actor ut ſupra reus actori et præſtet juramentum et ſubeat examen ut ſupra et reo detur terminus ad probandum in proximum et fiat ut ſupra actori.

Quarto die producantur teſtes rei ſi quos habeat qui juramento ſuſcepto moneantur examinari citra proximum reliquaque fiant per judicem vel in publica teſtium examinatione vel in concedendis alteri interrogatoriis quæ ſecundo die juridico fiebant de teſtibus actoris.

Quinto die publicentur dicta teſtium rei aſſignetur ad ſententiam proximo et ad informandum interim.

Sexto die feratur ſententia.

Septimo et ultimo niſi interim ab altera parte appellatum fuerit mandetur ſententia executioni.

Placet

Placet etiam vobis ut quilibet advocatus procurator ſive cauſarum defenſor necnon quilibet officiarius curiarum academiæ noſtræ virtute juramenti ſui corporalis per eorum quemlibet præſtandi præmiſſa omnia et ſingula ſtricte teneantur obſervare priuſquam in ullis cauſis in poſterum in dictis curiis movendis admittantur et ut iſte ordo et hæc conceſſio veſtra pro ſtatuto habeatur et in libris procuratorum infra decem dies jam proxime ſequentes inſcribatur,

N° V.

Biſhop White's interpretation of the words De majore parte ſociorum, in the ſtatutes of Jeſus college.

DE majore parte ſociorum quomodo accipienda ſit, tam in dicto ſtatuto de electione officiariorum, cap. 12. quam etiam in ſtatuto de electione ſociorum et forma ejuſdem cap. 5 et denique in ſtatuto de ſcholaribus in collegio exhibendis cap. 9, de quibus omnibus idem dubium movetur, ita judicamus. Nimirum cum in ſtatutis veſtris obſervemus requiri alias univerſaliter majorem partem omnium ſociorum, ut in quibuſdam rebus et negotiis arduis cap. 3. 25, 26, 27, 28. memoratis, alias ſimpliciter et indefinite majorem partem ſociorum, non adjecta voce omnium, ut in electionibus ſociorum, ſcholarium, et officiariorum dictis capitibus 5. 9. et 12. cumque præterea unicuique dictarum electionum ſuus certus terminus ultra quem differri non debeat in iiſdem ſtatutis limitetur, cum denique in dicto ſtatuto, de electione ſociorum, expreſſe et ſignanter dicatur, magiſter convocabit omnes ſocios ejuſdem collegii tum in academia præſentes, abſentium nulla habita ratione aut mentione facta, eademque eſſe videatur reliquorum duoruu ſtatutorum ratio: his igitur omnibus diligenter collatis et perpenſis, tam verba illa dicti capitis quinti, de electione ſociorum et forma ejuſdem, illi electi cenſeantur et pro electis reputentur, in quos magiſter

magiſter et in ejus abſentia præſidens ſive locum tenens et major pars ſociorum conſenſerint, quam illa capitis noni, dictos vero ſcholares per magiſtrum et majorem partem ſociorum toties eligi et admitti volumus, et denique illa capitis duodecimi, illi pro electis officiariis habeantur in quos magiſter vel in ejus abſentia præſidens et major pars ſociorum expreſſe conſenſerint, ita interpretamur, ut intelligantur, et intelligi debeant, non de majore parte numeri ſociorum pro tempore exiſtentium, ſed tantum de majore parte ſociorum tum in academia præſentium quando electionem fieri debere contigerit.

Proviſo ſemper, quod in omnibus dictis electionibus requiratur præſentia majoris partis totius numeri ſociorum pro tempore exiſtentium. Proviſo tamen inſuper quod ſi quis ſociorum legitime monitus ſive vocatus ad capitulum venire noluerit, aut neglexerit, vel cum ſemel præſens fuerit in capitulo ſine venia diſceſſerit, habeatur pro illa vice et quoad res explicandas in illo capitulo tanquam nullus de numero exiſtentium.

The above is the interpretation referred to in pages xxvii. and xxviii.

N° VI.

Mr. Kilvington's character vindicated by the twenty-ſeven.

The following paper was drawn up by the twenty-ſeven, by way of reſcuing Mr. Kilvington from the juſt odium teſtified againſt him for his very improper conduct.

Cambridge, June 1ſt, 1793.

WE, the underwritten, expreſs our deteſtation of the ſcandalous and unfounded imputations, which were attempted

tempted to be thrown upon the characters of Mr. Lloyd, and Mr. Kilvington, at the late trial of Mr. Frend.

T. Kipling	R. Boon
J. Jowett	J. Dudley
R. Glynn C.	W. Pugh
W. L. Manfel	C. Simeon
J. Mainwaring	Antho. Mainwaring
R. T. Belward	Ed. Wigley
Geo. Whitmore	W. Millers
W. Walford	Jos. Watfon
J. Olderfhaw	Tho. Caftley
W. Wade	John King
W. Mathew	Philip Douglas
J. Smith	E. Edwards
J. Wood	J. Bradfhaw
W. Wilfon	W. Walker
H. Greene	J. Fawcett
R. Ramfden	R. Tillard
A. Frampton	W. Eafton
E. Outram	Henry Jowett

To the above Mr. Farifh added his own manifefto, in the following terms:

THE teftimony given by Mr. Kilvington, during the trial of Mr. Frend, having been openly contradicted by the latter, and an idea having prevailed that certain letters written by Mr. Kilvington to Mr. Frend, contained a proof that the teftimony was untrue; I think myfelf called upon to declare publickly, in vindication of Mr. Kilvington's character, that, fince the trial in the vice-chanceller's court, Mr. Frend, on application made to him by Mr. Kilvington's defire, fhewed me thofe letters, and that there was nothing in them which appeared to me in the fmalleft degree to invalidate that teftimony. The fubftance of the letters was an application for college

teftimonials,

teſtimonials, and they contained general expreſſions of gratitude to Mr. Frend for favours received, which, according to Mr. Frend's explanation, conſiſted in attentions ſhewn to Mr. Kilvington, when at Jeſus college, and the ſupplying him occaſionally with books from the library.

W. FARISH,
Senior Proctor of the Univerſity.

Magd. Coll. July 1, 1793.

With reſpect to the main point, the falſehood of Mr. Kilvington, in attributing any civilities ſhewn to him to a deſire of proſelyting him, theſe manifeſtos are by no means ſatisfactory. The impartial reader will turn to the letters, p. 107. and from them form a truer judgement, than from the ipſe dixit of any one of the cabal. At the ſame time he muſt give the twenty-ſeven credit for ſtanding by each other to the laſt, and proving, by their own ſignatures, that 'they are all, all honourable men.'

The inſidious conduct of Mr. Fariſh, deſerves ſevere reprehenſion: he called on Mr. Frend as an old acquaintance, and the letters were, at his requeſt, ſhewn to him, without any ſuſpicion of his being ſent by the twenty-ſeven on ſuch a meſſage. A free converſation then took place between them, in which Mr. Frend obſerved that the conduct of Mr. Kilvington was as ridiculous, as it was baſe. He had, on coming to college, brought letters of introduction from a common friend, from which he became intitled to the uſual civilities, founded on ſuch occaſions. Mr. Frend recollects, particularly, the manner in which this was ſtated. You know, ſaid he, to Mr. Fariſh, that as tutours you take notice of men on two accounts. Thoſe, who have abilities and induſtry, you take notice of for their own ſakes, and are happy in ſhewing them particular attention:

others, not at all distinguished from the common mass, come frequently with recommendations from common friends, for whose sakes they are entitled to a degree of attention. To the former class, Mr. Kilvington had no pretensions; on the latter account, he had a right to expect the notice shewn to him, which did not however equal the attention paid to several of his fellow students, from whom I have received a very different return, and whom I am happy to see distinguishing themselves in more laudable pursuits.

N°. VII.

Petition for the removal of subscription to articles and confessions of faith.

To the honourable the commons of Great Britain in parliament assembled.

The humble petition of certain of the clergy of the church of England, and of certain of the two professions of civil law and physick, and others whose names are hereunto subscribed,

Sheweth,

That your petitioners apprehend themselves to have certain rights and privileges which they hold of God only, and which are subject to his authority alone. That of this kind is the free exercise of their own reason and judgement, whereby they have been brought to and confirmed in the belief of the christian religion, as it is contained in the holy scriptures; that they esteem it a great blessing to live under a constitution, which in its original principles ensures to them the full and free profession of their faith, having asserted the authority and

sufficiency

ſufficiency of holy ſcriptures in all things neceſſary to ſalvation; ſo that whatſoever is not read therein, nor may be proved thereby, is not to be required of any man that it ſhould be believed as an article of faith or be thought requiſite or neceſſary to ſalvation. That your petitioners do conceive that they have a natural right, and are alſo warranted by thoſe original principles of the reformation from popery, on which the church of England is conſtituted, to judge in ſearching the ſcriptures, each man for himſelf, what may or may not be proved thereby. That they find themſelves, however, in a great meaſure precluded the enjoyment of this invaluable privilege by the laws relating to ſubſcription; whereby your petitioners are required to acknowledge certain articles and confeſſions of faith and doctrine, drawn up by fallible men to be all and every of them agreeable to the ſaid ſcriptures. Your petitioners therefore pray, that they may be relieved from ſuch an impoſition upon their judgement, and be reſtored to their undoubted rights as proteſtants of interpreting ſcripture for themſelves, without being bound by any human explications thereof, or required to acknowledge by ſubſcription or declaration the truth of any formulary of religious faith and doctrine whatſoever beſide holy ſcripture itſelf.

That your petitioners not only are themſelves aggrieved by ſubſcription as now required, which they cannot but conſider as encroachments on their rights, competent to them both as men and as members of a proteſtant eſtabliſhment, but with much grief and concern apprehend it to be a great hindrance to the ſpreading of Chriſt's true religion: as it tends to preclude, at leaſt to diſcourage, further inquiry into the true ſenſe of ſcripture, to divide communions and cauſe mutual diſlike between fellow proteſtants: as it gives an handle to unbelievers to reproach and vilify the clergy

by repreſenting them, when they obſerve their diverſity of opinion touching thoſe very articles which were agreed upon for the ſake of avoiding the diverſities of opinion, as guilty of prevarication, and of accommodating their faith to lucrative views or political conſiderations: as it affords to papiſts and others diſaffected to our religious eſtabliſhments occaſion to reflect upon it as inconſiſtently framed, admitting and authoriſing doubtful and precarious doctrines, at the ſame time that holy ſcripture alone is acknowledged to be certain and ſufficient for ſalvation: as it tends, and the evil daily encreaſes, unhappily to divide the clergy of the eſtabliſhment themſelves, ſubjecting one part thereof, who aſſert but their proteſtant privilege to queſtion every human doctrine and bring it to the teſt of ſcripture, to be reviled as well from the pulpit as the preſs, by another part, who ſeem to judge the articles they have ſubſcribed to be of equal authority with the holy ſcripture itſelf: and laſtly, as it occaſions ſcruples and embaraſſments of conſcience to thoughtful and worthy perſons in regard to entrance into the miniſtry or chearful continuance in the exerciſe of it.

That the clerical part of your petitioners, upon whom it is peculiarly incumbent, and who are immediately appointed by the ſtate to maintain and defend the truth as it is in Jeſus, do find themſelves under a great reſtraint in their endeavours herein, by being obliged to join iſſue with the adverſaries of revelation in ſuppoſing the one true ſenſe of ſcripture to be expreſſed in the preſent eſtabliſhed ſyſtem of faith, or elſe to incur the reproach of having departed from their ſubſcriptions, the ſuſpicion of inſincerity, and the repute of being ill-affected to the church; whereby their comfort and uſefulneſs among their reſpective flocks, as well as their ſucceſs againſt the adverſaries of our common chriſtianity are greatly obſtructed.

That

That ſuch of your petitioners, as have been educated with a view to the ſeveral profeſſions of civil law and phyſick, cannot but think it a great hardſhip to be obliged, as are all in one of the univerſities even at their firſt admiſſion or matriculation, and at age ſo immature for diſquiſitions and deciſions of ſuch moment, to ſubſcribe their unfeigned aſſent to a variety of theological propoſitions, concerning which their private opinions can be of no conſequence to the publick, in order to entitle them to academical degrees in thoſe faculties; more eſpecially as the courſe of their ſtudies, and attention to their practice reſpectively afford them neither the means nor the leiſure to examine whether and how far ſuch propoſitions do agree with the word of God.

That certain of your petitioners have reaſon to lament not only their own but the too probable misfortune of their ſons, who, at an age before the habit of reflection can be formed, or their judgement matured, muſt, if the preſent mode of ſubſcription remains, be irrecoverably bound down in points of the higheſt conſequence to the tenets of ages leſs informed than their own.

That, whereas the firſt of the three articles, enjoined by the thirty-ſixth canon of the church of England to be ſubſcribed, contains a recognition of his majeſty's ſupremacy in all cauſes eccleſiaſtical and civil, your petitioners humbly preſume that every ſecurity propoſed by ſubſcription to the ſaid article is fully and effectually provided for by the oaths of allegiance and ſupremacy, preſcribed to be taken by every deacon and prieſt at their ordination, and by every graduate in both univerſities.

Your petitioners, nevertheleſs, are ready and willing to give any farther teſtimony, which may be thought expedient, of their affection for his majeſty's perſon and government, of their attachment and dutiful ſubmiſſion in church and ſtate, of their abhorrence of the unchriſ-

tian

tian ſpirit of popery, of all thoſe maxims of the church of Rome which tend to enſlave the conſciences or to undermine the civil or religious liberty of a free proteſtant people.

Your petitioners in conſideration of the premiſes do now humbly ſupplicate this honourable houſe, in hope of being relieved from an obligation ſo incongruous with the right of private judgement, ſo pregnant with danger to true religion, and ſo productive of diſtreſs to many pious and conſcientious men and uſeful ſubjects of the ſtate; and in that hope look up for redreſs and humbly ſubmit their cauſe under God to the wiſdom and juſtice of a britiſh parliament and the piety of a proteſtant king.

And your petitioners ſhall ever pray, &c.

This petition, ſigned by about 250 perſons, was preſented to the houſe of commons on Thurſday the 6th of February, 1772, by Sir William Meredith, and, after nine hours debate, was rejected on a diviſion by 219 againſt 73.

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